

The 10th January, 1995

No. 14/13/87-6 Lab/1116.--In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Ambala in respect of the dispute between the workman and the management of M/s. Manager Harkalyan Binders and Printing Press Panchkula versus Ved Pal Singh.

IN THE COURT OF SHRI S.R. BANSAL
(ADDITIONAL DISTRICT AND SESSIONS JUDGE)
PRESIDING OFFICER, LABOUR COURT, AMBALA

Reference No. 219 of 1989

WORKMAN SHRI VED PAL SINGH, S/O SHRI SADHU SINGH,
C/O SHRI SADHU RAM SHARMA,
H. NO. 1159, BURAIL, CHANDIGARH

And

THE MANAGEMENT OF THE MANAGER,
HARKALYAN BINDERS AND PRINTING PRESS, PANCHKULA

Present :

WR, Shri J.R. Sharma.

MR, Miss Sheela Chalot.

AWARD

In exercise of the powers conferred by clause (C) of sub-section (1) of section 10 of the Industrial Disputes Act (for short called as 'the Act'), the Governor of Haryana referred the following dispute between Shri Ved Pal Singh and the management of the Manager Harkalyan Binders and Printing Press Panchkula to this court for adjudication,--vide Haryana Government notification bearing No. 24721--25, dated 12th June, 1989 :--

Whether the termination of services of Shri Ved Pal Singh is valid and justified ? If not so, to what relief is he entitled ?

The workman raised an industrial dispute by serving a demand notice under section 2 (A) of the Act. The conciliation proceedings were taken up by the Labour Officer-cum-Conciliation Officer. The same having been failed, the appropriate Government made the above mentioned reference to this court.

On receipt of the reference notices were issued to the workman as well as to the management. The workman appeared and submitted his claim statement dated 14th September, 1989. It was pleaded that he joined the services of the management on 1st August, 1987 as a Helper and he has been performing his duty quite satisfactorily. However, his services were terminated on 31st July, 1988. It is alleged that no charge-sheet was served nor any departmental enquiry was conducted against him. Similarly no show cause notice was served upon the workman nor wages in lieu of notice was paid. The management also did not

pay retrenchment compensation. The workman has assailed his termination to be illegal and demanded his reinstatement with continuity of service and back wages.

The management in the written reply filed took up preliminary objection that the claim statement has not been signed by the workman nor by any officer of the Trade Union of which he is a member or by any other workman in the same establishment duly authorised by him in this behalf. Provided that such a workman is not a member of a different trade union. It was pleaded that the workman served the management from 1st August, 1987 to 31st January, 1988 and absenting himself thereafter and did not turn upon duty. The question of any charge-sheet or conducting of any departmental enquiry does not arise as his services were never terminated but he himself abandoned the job. It was also pleaded that there was no question of giving show cause notice on the workman has not completed service of 240 days when he abandoned the job. The management therefore prayed for the rejection of the claim.

The workman in his replication filed. Controverting the allegations of the management in the written statement filed and reiterated those made in the claim statement.

On the rival contentions of the parties, the following points in issue were framed for decision :--

- (1) Whether the impugned termination of services of the workman is invalid ? OPM
- (2) Whether the claim statement has not been properly maintainable for the reasons stated in preliminary objection No. 1 ? If so, to what effect ? OPM
- (3) Relief.

Parties led evidence. I have heard the Ld. representatives of the parties. My issue wise findings are as under :--

Issue No. 1:

In support of his case the workman appeared as his own witness and supported all the allegations made by him in the claim statement. He stated having served the management from 1st August, 1987 to 31st August, 1987. He stated that he was paid bonus for eight months and bonus for the remaining four months is yet to be paid. During cross-examination, he stated that his attendance used to be marked in the daily wages register on the other hand the management has produced MW-1 Gulshan Sharma who brought the attendance register and other relevant record. The witness stated that he used to mark the worker's presence. He stated that the workman joined as Helper on 1st August, 1987 and worked for 240 days in the month of August, 1987 for 24 days, in September, 1987, for days, in October, 1987, for 21 days, for 24 days in November, 1987, for 25 days in December, 1987 and for 22 days in January, 1988 and also stated that thereafter the workman did not come present. He produced Ex. M-1 to Ex. M-6 copies of the relevant attendance register and further produced copies of the payment vouchers Ex. M-7 to Ex. M-15. He again testified that the workman did not come present after January, 1988. He also stated that Kanwar Pal uncle of the workman was Executive Engineer of the management who had appointed

the workman on daily wages basis. From the evidence on the record, it is evident that the workman worked for a total period of 141 days for which he was paid,--vide Ex. M-7 to Ex. M-15. The workman has not proved that he worked for the period from February, 1988 to 31st July, 1988. His bold statement in the case of the documentary evidence cannot be believed to hold that he worked with the management upto 31st July, 1988. The workman himself choose to abandon the job and did not turn up on duty. Under these circumstances the contentions that no charge-sheet was served nor notice was issued or for that matter retrenchment compensation was not paid is not tenable and the finding on this issue shall stand returned against the workman and in favour of the management.

Issue No. 2:

The claim statement is admittedly not signed by the workman nor is it signed by any officer of the trade union of which he is member. It is not the case of the workman that Ajit Singh Bagri who signed the claim statement was the President of the Union. The claim statement filed is thus not proper and the finding on this issue shall stand returned against the workman and in favour of the management.

Relief.

In the end, it is held that the workman is not entitled to any relief.

The reference shall stand answered accordingly.

S.R. BANSAL,

Dated : The 24th November, 1994

Addl. Distt. & Sessions Judge,
Presiding Officer, Labour Court
Ambala.

Endorsement No.1878, dated the 8th December, 1994, Ambala City

Forwarded four copies to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

S.R. BANSAL,

Addl. Distt. & Sessions Judge,
Presiding Officer, Labour Court
Ambala.

No. 14/13/87-6Lab./1117.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Ambala in respect of the dispute between the workman and the management of M/s The Ambala Central Co-operative Bank Limited, Ambala city versus Shish Pal Singh.

IN THE COURT OF SHRI S.R. BANSAL (ADDITIONAL DISTRICT & SESSIONS JUDGE) PRESIDING OFFICER, LABOUR COURT, AMBALA

Reference No. 545 of 1988

between

WORKMAN SHRI SHISH PAL SINGH, SON OF SHRI RAM SINGH, VILLAGE NUR PUR,
POST OFFICE MARDON SAHAB, TEHSIL AND DISTRICT AMBALA
and

THE MANAGEMENT, THE AMBALA CENTRAL CO-OPERATIVE BANK LTD.,
AMBALA CITY
present :

WR Shri Shri R. Nath.
MR Shri Gian Grewal.

AWARD

In exercise of the powers conferred by clause (c) of sub-section 1 of section 10 of the Industrial Disputes Act, 1947 (for short called as the 'Act'), the Governor of Haryana referred the following dispute between the workman Shri Shish Pal Singh and the Management, The Ambala Central Co-operative Bank Ltd., Ambala City to this court for adjudication,--vide Haryana Government notification bearing no. 49837-41, dated 8th November, 1988 :--

Whether the termination of the services of Shri Shish Pal Singh is valid and justified ? If not so, to what relief is he entitled ?

The workman served a demand notice dated 5th September, 1988 under section 2-A of the Act. On receipt of the demand notice Labour Officer-cum-Conciliation Officer took out conciliation proceedings. The same having failed the appropriate government made the above mentioned reference.

On receipt of the reference notices were issued to the workman as well as to the management. The workman appeared and filed his claim statement dated 20th March, 1988. It was pleaded by the workman that he was appointed as Secretary, Co-operative Credit and Service Society on 24th September, 1976 and his services were illegally terminated on 11th April, 1986 in violation of the services rules and principles of natural justice. It was alleged that a false and illegal enquiry was conducted against him by an biased enquiry officer. No adequate opportunity to defend the case was given to him. It was alleged that the enquiry officer conducted the illegal enquiry against him on the basis of which termination order was passed which is illegal. The workman, therefore, demanded his reinstatement with continuity of service and back wages.

The management in the return filed pleaded that while working as Secretary in Paploha and Sippianwala Co-op. Credit and Services Society the workman embezzled huge amounts to the tune of Rs. 45,751.78 Ps. and his services were terminated after holding an enquiry twice and after giving the workman full opportunity. The workman submitted an affidavit that amount of Rs. 27,500 has been spent by him and he promised to pay the said amount to the society upto 20th February, 1981 failing which

the bank is at liberty to take any action against him. The detailed enquiry was held and the workman participated therein. It was pleaded that the services of the workman are governed by the provisions of The Punjab Co-operative Societies Act, 1961 and he is estopped from filing the claim statement as he filed an appeal before Deputy Registrar, Co-operative Societies, Haryana which was dismissed and aggrieved by the order of Deputy Registrar he filed a revision before Deputy Secretary to Government of Haryana which was also dismissed on 16th August, 1988.

The workman in the replication filed did not controvert this fact. He, however, refuted other allegations and reiterated the allegations made in the claim statement. On the rival contentions of the parties the following points in issues were laid down for decision on 26th March, 1990 :--

- (1) Whether the impugned termination of services of the workman is invalid ? OPW
- (2) Whether this court has no jurisdiction to try the reference as alleged in preliminary objection No. 1 of the WS ? OPM
- (3) Whether the workman is estopped from filing the claim as alleged in preliminary objection No. 2 of the WS ? OPM
- (4) Relief.

I have heard the representatives of the parties. My findings are as under :--

Issue No. 1 :

The management produced MW-1 Shri Kuldip Rai Vaid, the enquiry officer who proved having conducted the enquiry, recorded the statements of the witnesses. He proved EX. M-1 copy of enquiry proceedings and stated that after enquiry he gave full opportunity to the workman for his defence. He stated that on 28th December, 1983 he submitted his enquiry report EX.M-2. He also stated that his enquiry report was placed before Board of Directors who,--vide Ex.M-3 decided to provide more opportunity to the workman for producing evidence if any in his support. The enquiry officer also stated that he again conducted the enquiry and submitted his report. He proved EX.M-4 copy of the proceedings and EX.M-5 copy of his enquiry report. MW-2 Nirmal Jit Singh stated that the charge-sheet Ex.M-6 was served on the workman to which the workman submitted his reply EX.M-7. He further stated that thereafter Shri K.R. Vaid was appointed as enquiry officer who conducted the enquiry and submitted his enquiry report. On the basis of which a show-cause notice EX.M-8 was given to the workman. The workman appeared before the Board of Director who further allowed further opportunity to him to produce any evidence in his defence. The witness stated that after receipt of the enquiry report show-cause notice EX.M-9 was issued to him to which the workman submitted his reply EX.M-10. He also stated that,--vide EX.M-11 opportunity of personal hearing was given to the workman and,--vide EX.M-12 the attendance report of workman before the Board of Director on 17th March, 1986. He further stated that after hearing Board of Directors terminated the services of the workman,--vide EX.M-13 and,--vide EX.M-14 the appeal of the workman was dismissed. He also tendered into evidence EX.M-15 to EX.M-23. The workman appeared as WW-I and supported all the averments of his demand notice. He also produced in evidence EX.W-1, Ex.W-2, EX.W-3 and EX.W-4.

The first objection taken by the workman is that the Managing Director was not competent to take action against him. There is no merit in this contention. Rule 29-D of the Haryana State Central Co-operative Bank Staff Service (Common Cadre) Rules, 1975 is clear that the Managing Director shall be competent to issue charge-sheet, obtain explanation, appoint an enquiry officer, serve a show cause notice against the proposed action to be taken against the employee. The final punishment shall however be imposed by the appointing authority.

The next objection of the workman is that he was not allowed to be defended through an advocate during the enquiry proceedings. The statement made by the workman in the court is that he was not informed at the start of the enquiry that he can take the assistance of any other person. There is thus variance between pleading and proof. MW-I Shri K.R. Viad, Enquiry Officer has made the position clear by stating in the cross-examination that the assistance of another person was not given to the workman as he never asked for it. Rule 28-B of the Common Cadre Rules, 1975 clearly stipulates that employee shall not be allowed to engage a counsel against the enquiry.

The perusal of the enquiry proceedings shows that the same have taken place according to law and the workman has been fully associated with the enquiry proceeding. It is evident from EX.M-2 copy of the enquiry proceedings that the witnesses were examined in the presence of workman and the statements of as many as 25 witnesses were recorded. It further reveals that the workman was given opportunity to cross-examine the witnesses but he has not opted to cross-examine all the witnesses. Its perusal further shows that on 6th July, 1982 workman prayed for five days time to make a statement and to produce his defence witnesses and the enquiry was accordingly adjourned to 24th July, 1982. However on 24th July, 1982 the workman did not appear and ex parte proceeding had to be taken against him. The enquiry report alongwith entire proceedings were placed before the Board of Directors and the Board of Directors gave one more opportunity to the workman to produce evidence in his defence. Accordingly Board of Directors wrote letter EX.M-3 to the enquiry officer to provide an opportunity to the workman for producing evidence if any in his support and the workman was directed to appear before the enquiry officer on 4th March, 1985. On 4th March, 1985 the workman appeared before the enquiry officer and told him that he was getting orders from the Managing Director of the Bank for the transfer of the enquiry. He asked the enquiry officer to wait for one hour. The enquiry officer however, waited for the workman upto 4.30 but he did not turn up and thereafter the enquiry could not be conducted and had to be adjourned to 20th May, 1985 which was noted by the workman on 8th May, 1985. On 20th May, 1985 the workman appeared before the enquiry officer and requested him to cross-examine the witnesses. He had already been allowed to cross-examine the witnesses and accordingly his request was turned down as it was thought he was delaying the enquiry. The enquiry was, therefore, closed on 24th July, 1985. The workman again appeared before the enquiry officer and on his request made the enquiry was again adjourned to 25th July, 1985. On 25th July, 1985 the workman showed the proceeding book and agenda issue book he declined to give any statement and stated that he will make a written reply but declined to sign the proceedings. Accordingly Enquiry Officer sent his report EX.M-5. The reply of the workman to the show-cause was considered and he was given personal hearing and thereafter his termination order was passed. His appeal was dismissed,--vide EX.M-14. It is thus quite evident that the

workman was given full opportunity to defend the case during the enquiry proceedings. It is pertinent to observe here that the workman has never objected regarding enquiry proceeding prior to order EX.M-3 dated 27th February, 1985. After this letter the workman has allowed to give his defence or his witnesses. He was not given any chance to cross-examine the witnesses. It was thus not incumbent upon the enquiry officer to adjourn enquiry proceeding when it was clear to him that the workman was adopting delay tactics. Moreover he adjourned the enquiry proceeding as clear from EX.M-4. It has come in the proceedings that he stated that he would make written reply and refused to sign the enquiry proceedings. It is clear from EX.M-9 show-cause notice that opportunity was given to the workman to produce his defence evidence. It also shows that copy of enquiry report was sent to him which fact also is clear from EX.M-15. The workman submitted reply to the show-cause notice. Opportunity of personal hearing was also afforded to him. The acquittal of the workman in the criminal case,--vide EX.W-4 does not absolve him from departmental proceedings. The acquittal of workman in criminal case on the ground of benefit of doubt does not exonerate him from the departmental charges of ambazzlement. Moreover the workman exhausted the departmental remedies. His appeal was dismissed,--vide EX.M-14. It stands admitted in reply to the preliminary objection No. 3 of the written statement. The revision filed by him also stand dismissed by the Government. The statement of enquiry officer during cross-examination is clear that he had directed the management to supply the list of documents and witnesses to the workman. It is also clear from his statement that no such objection was made by the workman on any subsequent hearing. Had it been so the workman would have raised the objection again. It is, thus, clear that the impugned termination of the workman took place in pursuance of a valid domestic enquiry. The finding on this issue shall stand returned against the workman and in favour of the management.

Issue No. 2 and 3 :

Both these issues are inter-lined and are taken up together.

It is clear that the workman agitated the matter before the channel provided in teh Punjab Co-operative Societies Act, 1961 (now Haryana Co-operative Societies Act, 1984). He unsuccessfully agitated the matter before the Deputy Registrar, Co-operative Societies, Haryana, Chandigarh and Deputy Secretary to Government of Haryana department of co-operation. Having failed there he is astopped from initiating the present proceeding by serving a demand notice at this belated stage after about 4½ years. Nor this court is competent to try it. Holding accordingly, I determine both these issues against the workman and in favour of the management.

Relief :

In the end, it is held that the workman is not entitled to any relief.

The reference shall stand answered accordingly.

S.R. BANSAL,

Dated the 25th November, 1994

Additional District & Sessions Judge,
Presiding Officer, Labour Court,
Ambala.

Endorsement No. 1885, dated the 29th November, 1994.

Forwarded (four copies) to the Financial Commissioner and Secretary to Government of Haryana, Labour & Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

S.R. BANSAL,

Additional District & Sessions Judge,
Presiding Officer, Labour Court,
Ambala

No. 14/13/87-6Lab./1118.--In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Ambala in respect of the dispute between the workman and the management of M/s M.D., Haryana State Electronics Development Corporation Limited, 1556, Sector 18-D, Chandigarh versus Banarsi Dass.

IN THE COURT OF SHRI S.R. BANSAL (ADDITIONAL DISTRICT & SESSIONS JUDGE, PRESIDING OFFICER, LABOUR COURT, AMBALA

Reference No. 523 of 88

WORKMAN SHRI BANARSI DASS, SON OF SHRI HIRA LAL, VILLAGE AND P.O.
JATWAD, TEHSIL NARAINGARH, DISTRICT AMBALA

and

THE MANAGEMENT, MANAGING DIRECTOR, HARYANA STATE ELECTRONICS
DEVELOPMENT CORPORATION LIMITED,
1556, SECTOR 18-D, CHANDIGARH

Present :

Shri C.L. Sharma.
Shri S.M. Singh.

AWARD

In exercise of the powers conferred by clause (c) of sub-section 1 of section 10 of the Industrial Disputes Act, 1947 (for short called as the 'Act'), the Governor of Haryana referred the following dispute between the workman Shri Banarsi Dass and the management. The Managing Director, Haryana State Electronics Development Corporation Limited, 1556, Sector 18-D, Chandigarh to this court for adjudication,--vide Haryana Government notification bearing no. 29988-92, dated 16th June, 1988 :--

Whether the termination of the services of Shri Banarsi Dass is valid and justified ? If not, so, to what relief is he entitled ?,

The workman raised a demand notice, dated 23rd March, 1988 under section 2-A of the Act. The conciliation proceedings were taken out by the Labour Officer-cum-Conciliation Officer. The same having failed, the appropriate government made the above mentioned reference.

On receipt of the reference notices were issued to the workman as well as to the management. The workman appeared and stated that his demand notice may be treated as his claim statement. The stand of the workman in the demand notice/claim statement is that he was appointed as helper by the management,--vide letter of appointment, dated 16th February, 1983. He was confirmed from 3rd March, 1983. Later on he was transferred as peon-cum-chowkidar E.T.D.C., Gurgaon,--vide order dated 22nd February, 1984. It is alleged that the workman was caught by the police party near P.W.D. Rest House, Ambala Cantt. which is approximately at a distance of one kilometre from old I.D.D.C. complex. He was caught outside the office premises carrying the wood on his cycle on the early hours of the morning on 10th September, 1987 although report dated 11th September, 1987 was lodged with the police authorities, Ambala Cantt. but the matter was eventually filed. However, the management ordered a departmental enquiry against the workman which was conducted by Dr. Jagpal Singh, Project Manager-cum-Member Enquiry Committee, I.D.D.C., Ambala Cantt. After the enquiry the services of the workman were terminated,--vide order dated 21st January, 1988 by the Managing Director of the management. It is alleged that the termination order is illegal. There is no application of mind and the penalty imposed is harsh and finding given by the enquiry officer suffers from vice of arbitrariness. The workman was not allowed to cross-examine the witnesses nor he was allowed to lead his defence evidence. The principle of natural justice have been violated. The workman, therefore, demanded his reinstatement with continuity of service and back wages.

On the other hand the management pleaded that a fair and proper enquiry was held against the workman in which he fully participated. It was also pleaded that the court has no jurisdiction to entertain and try the matter as the management is not a industry and is not covered by Industrial Disputes Act. It is alleged that on 10th September, 1987 at 4-00 A.M. the workman had stolen the wood of the boxes belonging to the office from the office premises of I.D.D.C. and was caught red handed by the police. It was alleged that the workman left the office unattended at 4-00 A.M. on 10th September, 1987 without permission and these facts were proved in the enquiry held and therefore the workman is not entitled to any relief.

The workman in his replication, dated 29th January, 1990 controveering the allegations of the management in the written statement filed and reiterated those made in the demand notice/claim statement. On the pleadings of the parties the following points in issues were laid down for decision,--vide dated 29th January, 1990 :--

1. Whether the impugned termination of services of workman is invalid ? OPW
2. Whether this court has no jurisdiction to try the reference for the reason stated in preliminary objection No. 2 ? OPM
3. Whether the domestic enquiry was validly held ? OPM
4. Relief.

Parties led evidence. I have heard the representatives of the parties. My findings are as under :--

Issue No. 1 and 3 :

Although the learned representative of the management has contended that in case this court comes to the conclusion that the departmental enquiry held against the workman was invalid then the management may be permitted to adduce evidence to prove the charges against him in the court, yet the fact remains that the charges against the workman are of so trivial nature that the punishment of termination of services meted out to him is a too harsh a punishment. The management examined MW-I Rakesh Aggarwal who stated that a enquiry committee consisting of the witness and Dr. Jagpal Singh was constituted by the Managing Director of the management. He also stated that the charge-sheet Ex.M-1 was served to which the workman replied,--vide EX.M-2. He also produced X.M-3 proceedings of the enquiry. He stated that the workman was given full opportunity to cross-examine the witnesses and he was also afforded full opportunity to lead evidence. He stated that EX.M-4 is the enquiry report. During cross-examination he admitted that he does not know whether the list of witnesses and documents relied upon by the management are also supplied to the workman alongwith the charge-sheet. This witness could not tell that the record pertaining to the ownership of the management in respect of the wood recovered from the workman was produced during enquiry or not. On the other hand the workman appearing as WW.I has stated that he was not supplied with the list of witnesses and documents alongwith the charge-sheet. MW-I Rakesh Aggarwal has not categorically stated that the copy of enquiry proceeding was given to the workman whereas the statement of workman is categorical that the copy of the findings of enquiry was not supplied to him. The workman has also stated that he had purchased the wood recovered from him from one Maya Ram,--vide receipt Mark-A. He also stated that,--vide Mark-B no action was taken by the police against him in the FIR lodged. The fact of the matter is that the list of witnesses and documents relied upon by the prosecution was not supplied to the workman. Similarly it was proved on the file that the copy of the enquiry was not supplied to the workman. The enquiry is, thus, vitiated. The stand of the workman in reply of chargesheet Ex. M-2 is categorical that he purchased the wood from one Maya Ram. He produced photo copy of the receipt alongwith the reply. The stand of the workman has been consistant as it indeed becomes clear from Ex. M-3 copy of the enquiry proceeding. None of the witnesses examined by the enquiry office has categorically stated that the workman committed the theft of the wood or that he was caught near PWD rest House, Ambala Cantt. It has also not been stated that the wood belong to the department. Similarly enquiry report Ex. M-4 does not categorically show that the charges against the workman stood proved. It was held in K.D.S. Williams versus Management of Hindustan Machine Tools Ltd.-1994(4)-SLR-163 that the Labour Court can in an appropriate reference made to it examine the validity of the domestic enquiry. Similarly it was held in M.L. Duggal versus The Netaji Subhash National Institute of Sports, Patiala and others-1992(1)-Recent Service Journal-69 that where there is no discussion by the enquiry officer which was led by the party before him the finding of the enquiry officer are just the conclusion without discussion the evidence at all impugned order is passed on the basis of this report can not stand. Similar is the position in this case. It is not evidence on the file against the workman. The finding recorded by the

enquiry officer are based on no evidence. Moreover the enquiry vitiated on account of supply of list of witnesses and documents and also of report of enquiry officer. There is thus no point in permitting the management to prove the charges against the workman in the court. In any case the charges are trivial nature and do not call for the penalty of termination of services. I, therefore, hold that the termination order passed is illegal. In any case it is too harsh and the workman is entitled to reinstatement with continuity of service. Having regards to the facts and circumstances of the case the workman shall however not be entitled to back wages. The finding these issues is, therefore, returned in this manner.

Issue No. 2

The onus to prove on this issue was on the management. The management has however, not led evidence to prove this issue. The finding on this issue is, therefore, returned against the management.

Relief

In the end, the workman is held entitled to reinstatement with continuity of service but without back wages.

The references shall stand answered accordingly.

S.R. BANSAL,

Dated : The 25th November, 1994

Additional District & Sessions Judge,
Presiding Officer, Labour Court,
Ambala.

Endorsement No. 1853, Dated 29-11-1994

Forwarded (four copies) to the Financial Commissioner and Secretary to Government of Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act. 1947.

S.R. BANSAL,

Additional District & Sessions Judge,
Presiding Officer, Labour Court,
Ambala.

No. 14/13/87-6Lab/1119.--In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Ambala in respect of the dispute between the workman and the management of M/s. Director, The Philadelphia Hospital, Ambala City Vs. Saroj Bala

IN THE COURT OF SHRI S.R. BANSAL (ADDITIONAL DISTRICT & SESSION JUDGE)• PRESIDING OFFICER, LABOUR COURT, AMBALA

Reference No. 259 of 89

WORKMAN SAROJ BALA CALTON, WARD SISTER, MISSION HOSPITAL, AMBALA CITY AND THE MANAGEMENT DIRECTOR, THE PHILADELPHIA HOSPITAL, AMABAL CITY.

Present :

WR. Shri J.R. Sharma.
MR. Shri S.K.L. Gupta.

AWARD

In exercise of the powers conferred by clause (c) of sub section 1 of section 10 of the Industrial Disputes Act, 1947 (for short called as the 'Act'), the Governor of Haryana referred the following dispute between the workman Saroj Bala Calton and the Management, Director, the Philadelphia Hospital, Amabal City to this court for adjudication—vide Haryana Government notification bearing No. 30520-25, dated 20th July, 1989 :--

"Whether the termination of the services of Saroj Bala is valid and justified ? If not so, to what relief is she entitled ?"

The workman raised a demand noticed dated 17th May, 1989 under section 2-A of the Act. The conciliation proceedings were taken up by Labour Officer-cum-Conciliation officer. The same having failed, the appropriate Government made the above mentioned reference.

On receipt of the reference notices were issued to the workman as well as to the management. The workman appeared and submitted her claim statement dated 12th February, 1990. It was pleaded therein that the workman joined her services as a ward sister with the management in the year 1983 and while working as such a chargesheet dated 22nd November, 1983 was issued to her alleging on the false and filimsy grounds. It is alleged the workman was not supplied with the documents relied upon with the charge-sheet and she had to reply to the chargesheet in the absence of documents thereby causing prejudice to her. It is also alleged that the enquiry officer was biased and that he gave wrong findings on the basis of surmises and conjectures. It is also alleged that the charge-sheet was *mala fide* in as much as two show-cause notices were issued to the workman which shows that the management had a pre-determined mind to victimise the workman. It is alleged that the charge-sheet against the workman were never proved and the case of the management is based on no evidence. It is also alleged that the workman was also not paid subsistence allowance before hand which was paid only at the time of enquiry and as such the workman could not arrange to make the payment to the defence counsel well in time which also materially caused prejudice to her. It is alleged that without considering reply of the workman to the show-cause notice the impugned termination order dated 10th/11th May, 1989 was passed which is without jurisdiction as the director has no powers to terminate the services of the workman. The workman, therefore, demanded her reinstatement with continuity of service and back wages.

On the other hand the stand taken by the management in the written statement is that the services of the workman were terminated after a valid and proper enquiry and that too after affording her an adequate and reasonable opportunity at all the stages. There is no procedural bias in the matter. There were gravest act of misconduct on the part of the workman in the course of her official duties. She manoeuvred and manipulated the medical record and offered to tender apology which itself is indication of her tacit admission of the charges. It was pleaded that no industrial dispute existed between the parties and the reference made by the appropriate government is bad in law. It was also pleaded that the workman at no stage represented that the enquiry officer was prejudiced. She was all along represented by an advocate during the enquiry proceeding and the allegation is purely an after-thought and the workman is not entitled to any relief.

The workman in her replication filed dated 17th May, 1990 controverting the allegations of the written statement of the management and reiterated those made in the claim statement.

On the pleadings of the parties Shri S.D. Anand one of my learned predecessor,—vide his order dated 17th May, 1990 settled the under-mentioned issues for adjudication of the reference:—

1. Whether the impugned termination of services of the workman is invalid ? OPW
2. Whether the demand notice is not legally tenable for the reasons stated in preliminary objection No. 1 of the WS ? OPM
3. Whether the workman has cause of action for the reasons stated in preliminary objection No. 2, 3 and 4 of the WS ? OPM
4. Relief.

Parties led evidence. I have heard the representative of the parties. My findings are as under:—

Issue No. 1 and 2

Both these issues are inter-linked and are taken up together.

The management produced MW-1 Shri Uma Kant Trikha, advocate, the enquiry officer of the case. This witness stated that he was appointed an enquiry officer to conduct the enquiry against the workman,—vide appointment order Ex. M-1. He also produced copies of chargesheets Ex. M-2 and Ex. M-3 and reply of the workman to the chargesheets Ex. M-4 and Ex. M-5. The witness reiterated that he conducted the enquiry, gave notice Ex. M-6 to both the parties appearing before him, and also allowed the workman to be represented by Shri J.R. Sharma, advocate. He testified that the management produced four witnesses and documents during the course of enquiry whose statements were recorded in the presence of Shri J.R. Sharma, advocate who also cross-examined the witnesses. He testified that thereafter he called upon the workman to lead her defence evidence and recorded her defence evidence. He stated that after appraisal of the evidence adduced and hearing of both the parties he found charges proved against the workman and submitted his report Ex. M-7. He also

testified that during the course of enquiry the workman demanded documents which were supplied to her in the presence of her counsel. He also deposed that,—vide Ex. M-9 he directed the management to pay subsistence allowance to the workman which was paid to her on 4th January, 1989. He further proved Ex. M-10 copy of the enquiry proceeding running into 68 pages. During cross-examination he clarified that he had made the management to pay the entire subsistence allowance to the workman,—vide Ex. M-9. He denied the allegation of bias etc. MW-2 Dr. Raj Sukhnandan, Director stated that,—vide appointment letter Ex. M-11 the workman was appointed as Junior Ward sister. He then deposed that her work was not satisfactory and accordingly she was placed under suspension,—vide order Ex. M-12. He proved charge-sheets Ex. M-2 and Ex. M-3 and reply of workman Ex. M-4 and stated the reply of workman was not satisfactory. Accordingly she was placed under suspension and an enquiry was ordered against her to be conducted by Shri Uma Kant,—vide Ex. M-1 who submitted his enquiry report Ex. M-7, which was duly considered and thereafter show-cause notice Ex. M-13 was issued to the workman and reply of the workman Ex. M-14 submitted by her was duly considered and thereafter order her termination Ex. M-15 was passed. He produced Ex. M-16 copy of certificate of registration of the management as society and Ex. M-17 memorandum of association of the management-society. The perusal of memorandum and article of association shows that director was fully competent to order the enquiry against the workman and also to take action on the report of enquiry officer.

The representative of the workman contended that the act of the management in serving two show-cause notices to the workman before serving her chargesheet is illegal. I do not find any merit in this submission. The fact remains that the chargesheet was duly served, reply of the workman was duly obtained and a proper enquiry was ordered. The perusal of Ex. M-7 shows that the enquiry officer conducted perfect, legal and valid enquiry against the workman and gave full opportunity to her to cross-examine the witnesses and lead her defence evidence. The workman was represented by advocate during enquiry proceeding. She fully participated in the enquiry. The non-payment of the subsistence allowance prior to the start of departmental enquiry is of no consequence. The fact however remains that the enquiry officer made the management to pay the subsistence allowance in toto to the workman before the start of the enquiry. It is admitted by the workman herself that she never made any allegation of prejudice against the enquiry officer during the course of enquiry proceedings. This allegation now being levelled is thus clearly after-thought. I am, thus, of the clear opinion that a valid domestic enquiry was conducted against the workman in which the workman fully participated. The charges against the workman are of grave nature and the termination of her services in pursuance of such a valid enquiry is perfectly valid and legal. The finding on both these issues is, therefore, returned against the workman and in favour of the management.

Issue No. 3

For the reasons mentioned above the workman has no cause of action to agitate the matter by way of demand notice or submission of claim statement. The finding on this issue is also returned against the workman and in favour of the management.

Relief

In the end it is held that the workman is not entitled to any relief.

The reference shall stand answered accordingly.

The 30th November, 1994.

S.R. BANSAL,
Addl. Distt. & Sessions Judge,
Presiding Officer, Labour Court,
Ambala.

Endst. No. 1852, dated 29th November,

Forwarded (four copies) to the Financial Commissioner and Secretary to Government of Haryana, Labour and Employment Departments Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

S.R. BANSAL,
Addl. Distt. & Sessions Judge,
Presiding Officer, Labour Court, Ambala.

No. 14/13/87-6 Lab/1123.--In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Ambala in respect of the dispute between the workman and the management of M/s. The Honorary General Secretary Haryana State Council for Child Welfare, 650, Sector 16-D, Chandigarh Vs. Shree Bhagwan.

IN THE COURT OF SHRI S.R. BANSAL (ADDITIONAL DISTRICT & SESSIONS JUDGE), PRESIDING OFFICER, LABOUR COURT, AMBALA.

Reference No. 266 of 1991

WORKMAN SHRI SHREE BHAGWAN THROUGH SHRI DASI RAM, MOHALLA KHORAN, CHHACHHRAULI, YAMUNA NAGAR AND THE HONORARY GENERAL SECRETARY, HARYANA STATE COUNCIL FOR CHILD WELFARE, 650, SECTOR 16-D, CHANDIGARH, (2) ASSISTANT DIRECTOR-CUM-OFFICER INCHARGE, JUVENILE HOME & OBSERVATION HOME, BALKONJ, CHHACHHRAULI (YAMUNA NAGAR)

Present :

WR. Shri J.R. Sharma.
MR. Shri P.P. Khurana.

AWARD

In exercise of the powers conferred by clause (c) of sub-section 1 of section 10 of the Industrial Disputes Act, 1947 (for short called as the 'Act'), the Governor of Haryana referred the following dispute between the workman Shri Shree Bhagwan and the management The Honorary General Secretary, Haryana State Council for Child

Welfare, 650, Sector 16-D, Chandigarh and (2) Assistant Director-cum-Officer Incharge, Juvenile Home and Observation Home, Balkunj, Chhachhrauli (Yamuna Nagar) to this court for adjudication,—vide Haryana Government notification bearing No. 40187-92, dated 19th November, 1991 :--

"Whether the termination of the services of Shri Shree Bhagwan is valid and justified ? If not so, to what relief is he entitled ?"

The workman raised a demand notice dated 14th April, 1991 under section 2-A of the Act. The conciliation proceedings were taken out by the Labour Officer-cum-Conciliation Officer. The same having failed the appropriate government made the above mentioned reference to this court.

On receipt of the reference notices were issued to the workman as well as to the management. The workman appeared and submitted his claim statement dated 19th February, 1992. The plea taken therein is that he is appointed on the post of driver-cum-peon on 13th March, 1988 and was confirmed with effect from 1st April, 1989,—vide order dated 31st March, 1989. His services were however terminated,—vide order dated 31st March, 1991 without any prior notice or payment of retrenchment compensation in violation of mandatory provisions of section 25-F and 25-G of the Act. It was alleged that his junior namely Shri Rajinder Singh was retained. The workman demanded his reinstatement with continuity of service and back wages.

The management in the written statement filed admitted the factum of appointment, confirmation and termination of the services. It was, however, pleaded that since vehicle at Balkunj had been damaged and could not be repaired, therefore there being no vehicle in a running condition at Balkunj. The services of workman were not required and were accordingly terminated. It was admitted that Rajinder Singh was appointed but the plea taken is that new vehicle by the Ministry of Social Welfare, Government of India for headquarters staff for counseling centre for drug addicts was received and he was appointed against this specific vehicle to be used for the above project.

The workman submitted his replication dated 8th May, 1992 controverting the allegations of the written statement filed and reiterated those made in the claim statement. On the pleadings of the parties the following issues were framed,—vide order dated 8th May, 1992:--

- (1) Whether the termination of the services of Shri Shree Bhagwan is valid and justified ? If not so, to what relief is he entitled ? OPP'
- (2) Whether respondent establishment is not an industry under I.D. Act ? If so, its effect ? OPM
- (3) Relief.

The parties were permitted to lead evidence by way of affidavits and documents. The workman submitted his own affidavit Ex. W-1 and also produced Ex. W-2 copy of appointment letter Ex. W-3

copy of his confirmation letter dated 31st March, 1989; Ex. W-4 and Ex. W-5 copies of orders,-vide which increments were allowed to him on 22nd March, 1989 and 1st March, 1990; Ex. M-6 he was transferred from Headquarters to Balkunj, Chhachhrauli; Ex. W-7 copy of order dated 31st May, 1990,-vide which he was relieved from the headquarter Ex. W-8 his joining report at Balkunj, Chhachhrauli dated 1st June, 1990. Ex. W-9 copy of order dated 31st March, 1991,-vide which the services were terminated; Ex. W-10 copy of order of High court dated 4th April, 1991,-vide which the writ petition filed by the workman was dismissed but he was directed to seek reference to this court. The management produced affidavit Ex. M-1 of Shri Prem Kumar Yadav, Child Welfare Officer of the management. The workman produced his own counter-affidavit Ex. W-11 and the management produced his counter-affidavit Ex. M-2.

I have heard the representatives of the parties. My findings are as under:--

Issue No. 1 and 2

Both these issues are inter-linked and are taken up together.

The facts are not disputed in this case. The workman was appointed as driver-cum-peon and was confirmed as such and he had rendered more than 240 days of service in a calendar year when his services were terminated. It is also not disputed that no chargesheet was served nor any enquiry was held. Similarly no prior notice was given nor retrenchment compensation was paid. Mr. P.P. Khurana, learned authorised representative of the management has contended that clause 6 and 11 of appointment letter Ex. W-2 shows that in case of retrenchment the workman is not entitled to any claim benefit under the principle first-cum-last go. He also argued that the vehicle at Balkunj was damaged and could not be repaired. Therefore there was no vehicle in a running condition at Balkunj the service of the workman were not required and were accordingly terminated. It is not understood as to why the vehicle at Balkunj could not be got repaired. Similarly the mentioning of certain conditions in the appointment letter can not operate as a resjudicata as there can be no estoppel against a statute. It is admitted position on the record that Rajinder Singh a junior was retained. The management has tried to justify his retention on the ground that his appointment took place against a specific vehicle. A driver is appointed against a post not against a vehicle and the termination of the workman in the presence of retention of Rajinder Singh can not be justified simply on this count. The workman was appointed as driver-cum-peon by the Honorary Secretary of the management whereas his services were terminated by Assistant Director-cum-Officer Incharge a junior authority than the appointing authority. On this ground also the termination can not stand the scrutiny of the court. The question as to whether or not Haryana State Council for Child Welfare is a industry appears to have been set right,-vide judgment dated 4th April, 1991 Ex. W-10 of the Hon'ble High Court. I, therefore, hold that the termination of the services of workman is illegal and against the mandatory provisions of the Act. The workman is, therefore, entitled to reinstatement with continuity of service and back wages. The finding on both these issues is, therefore, returned in favour of the workman and against the management.

Relief:

In the end, the workman is held entitled to reinstatement with continuity of service and back wages.

The reference shall stand answered accordingly.

Dated : 25th November. 1994

S.R. BANSAL,
Addl. Distt. & Sessions Judge,
Presiding Officer, Labour Court, Ambala.

Endst. No. 1854, dated the 29th November, 1994

Forwarded (four copies) to the Financial Commissioner and Secretary to Government of Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

S.R. BANSAL,
Addl. Distt. & Sessions Judge,
Presiding Officer, Labour Court, Ambala.

No. 14/13/87-6 Lab/1124.--In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Faridabad-II in respect of the dispute between the workman and the management of M/s. Engineer-in-Chief P.W.D., B&R, Chandigarh v/s Sh. Kishan C/o Mrs. Sawita Bhandari.

IN THE COURT OF SH. U.B. KHANDUJA, PRESIDING OFFICER,
LABOUR COURT-II, FARIDABAD

Reference No. 682/93

between

1. The Management of Engineer-in-Chief, P.W.D. B & R, Haryana, Chandigarh.
2. Executive Engineer, Public Works Department, Division No. 2, Sector-8, Faridabad.

and

The Workman Namely Sh. Kishan C/o Mrs. Sawita Bhandari and Miss Alka Bhatia, Advocate, Faridabad.

Present :

None for the workman.
Sh. N.M. Sharma, for the respondent.

AWARD

In exercise of the powers conferred by clause (c) of Sub-Section (i) of Section 10 of the Industrial Disputes Act, 1947 (herein-after referred to as 'the Act'), the Governor of Haryana referred the following dispute between the parties mentioned above, to this court for adjudication,--vide Haryana Government Endst. No. 34257—63, dated 6th September, 1993 :--

- 1. Whether the termination of services of Sh. Kishan is legal and justified? If not, to what relief, is he entitled to?
- 2. The case of the workman is that he was appointed as a Baeldar by the respondent No. 2 on 1st June, 1986. His last drawn wages were Rs. 1,050 per month. He had been performing his duty properly and never gave any opportunity of complaint regarding his work and conduct. He has been performing duties similar to those who were appointed on regular basis and were paid much more salary. He tried to persuade the respondent No. 2 to regularise his services and also to make the payment of the wages as were being paid to the regular employees. The respondent No. 2 did not relish his genuine request and terminated his service with effect from 1st December, 1992 without assigning any reason. He is thus, entitled to be reinstated into service with continuity in service and full back wages.
- 3. The respondent No. 2 submitted written statement dated 20th July, 1994 stating therein that the workman was engaged on temporary muster rolls basis with effect from 1st March, 1988. He was paid wages as fixed by the State Government for daily wages workers. He was removed from service after being surplus. He is thus, not entitled to any relief.
- 4. At the aforesaid stage, the workman did not appear and as such it was ordered that he may be proceeded against ex parte.
- 5. The respondent No. 2 has submitted an affidavit to support his version given in the written statement.
- 6. I have heard Sh. N.M. Sharma, ADA appearing on behalf of the respondent No. 2 and have also gone through the affidavit.
- 7. It is clearly mentioned in the affidavit that the workman was appointed on daily wages as per rates fixed by the State Government and his services were terminated in July, 1990 as his services were not required after being surplus. There is no rebuttal to this version. The impugned order terminating the services of the workman is thus, legal and justified as per provision in clause 2(oo) (bb) of the Act. Consequently, the workman is not entitled to any relief. The award is passed accordingly.

Dated the 8th December, 1994

U.B. KHANDUJA,
Presiding Officer,
Labour Court-II, Faridabad.

Endst. No. 3334, dated the 14th December, 1994

A copy with three spare copies, is forwarded to the Financial Commissioner and Secretary to Government Haryana, Labour Department, Chandigarh.

U.B. KHANDUJA,
Presiding Officer,
Labour Court-II, Faridabad.

No. 14/13/87-6 Lab./1125.--In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Faridabad in respect of the dispute between the workman and the management of M/s. Indographic Art Machinery Co. Pvt. Ltd. versus Shri Moti Bahadur.

IN THE COURT OF SHRI U.B. KHANDUJA, PRESIDING OFFICER,
LABOUR COURT-II, FARIDABAD

Ref. No. 309/91

between

THE MANAGEMENT OF M/S INDOGRAPHIC ART MACHINERY CO. PVT. LTD.,
22, MATHURA ROAD, FARIDABAD.

and

THE WORKMAN NAMELY SHRI MOTI BAHADUR C/O SHRI R.N. RAI,
PRESIDENT, MERCHANTILE EMPLOYEES ASSOCIATION,
H-347, NEW RAJINDER NAGAR, NEW DELHI.

Present : Shri Hoob Lal for the workman.
Shri Pardeep Sharma, for the management.

AWARD

In exercise of the powers conferred by clause (c) of sub-section (i) of Section 10 of the Industrial Disputes Act, 1947 (herein-after referred to as 'the Act'), the Governor of Haryana referred the following dispute between the parties mentioned above, to this court for adjudication,--vide Haryana Government Endorsement No. 25086-91, dated the 11th July, 1991 :--

Whether the termination of services of Shri Moti Bahadur is legal and justified ? If not, to what relief, is he entitled to ?

2. The case of the workman is that he was employed by the management as Security Guard on 10th May, 1966 and was drawing monthly wages of Rs. 1135.10 p.m. There was no stipulation in the contract of employment between him and the management fixing the age of superannuation as 58 years. He has however, been retired on 13th February, 1991. He has not been paid retrenchment compensation under section 25-F of the Act. Consequently, the impugned action of the

management is illegal and he is entitled to be reinstated into service with continuity in service and full back wages.

3. The management submitted written statement dated the 4th November, 1992 stating therein that the workman had indicated his year of birth as 1932 in his application for his employment. He has thus, been retired with effect from 12th February, 1991 on attaining the age of superannuation. He has been paid his full and final dues such as gratuity, leave encashment to the tune of Rs. 15,744.40. He is thus, not entitled to any relief.

4. The workman submitted rejoinder dated the 3rd January, 1993 re-asserting the previous averments and denying the averments of the management.

5. On the pleadings of the parties, the following issue was framed :--

- (1) Whether the termination of services/retirement of Shri Moti Bahadur is legal and justified ? If not, to what relief, is he entitled to ? (As per terms of reference).

6. Both the sides have led evidence.

7. I have heard the authorised representatives of both the sides and have also gone through the evidence on record. My findings on the aforesaid issue are as under :--

Issue No. 1 :

8. The management has examined one witness MW-1, Y. Khan and he deposed that the workman had submitted application Ex. M-1 indicating his year of birth as 1932 at the time of seeking appointment. He was thus, retired from service on 12th February, 1991 on attaining the age of 58 years with prior notice dated the 2nd February, 1991 Ex. M-2. He further stated that the workman was paid gratuity, earned leave wages other full and final dues through receipts Ex. M-3 to Ex. M-6. on the basis of this statement, it has been urged on behalf of the management that the impugned action of the management is legal and valid.

9. On the other hand, the workman deposed that he was appointed on 10th May, 1966. His age at that time was 32 years. He was retired on 13th February, 1991 at the age of 57 years despite the fact that there was no clause in the agreement of service that he will be retired at the age of 58 years. He was not paid retrenchment compensation. He had filed an affidavit Ex. W-1 with regard to his date of birth. The impugned action of the management of retiring him from service is thus, illegal and unjustified and he is entitled to the relief claimed by him.

10. The workman has not furnished any document such as birth certificate or school leaving certificate etc. showing his exact date of birth. He has simply furnished an affidavit dated the 23rd February, 1989 Ex. W-1 indicating his date of birth as 18th December, 1933. This self serving version of the workman cannot be accepted in the absence of any supporting document. Apart from this, the workman indicated his

age as 67 years on 13th September, 1994 at the time of recording his statement in the court. In reply to a specific question in cross-examination he stated that it was correct that he had indicated his age as 65/67 years at the time of recording of his statement. This position also contradicts the version given by the workman in his affidavit that his date of birth is 28th December, 1933. In these circumstances, the reliance has to be placed on the version of the management that the workman had indicated his year of birth as 1932 in his application Ex-M-1 at the time of seeking appointment. It may be added that the workman had solemnly affirmed the particulars including the year of birth given in his application Ex. M-1 and as such he is bound by the same. For this reason too his changed version that his date of birth is 28th December, 1933 cannot be accepted. It is thus, concluded that the workman had attained the age of 58 years on 31st December, 1990.

11. The plea taken by the workman that he could not be retired at the age of 58 years as there was no stipulation in the agreement of service to this effect is no tenable. This observation is based on the ground that it is well settled principle that the workmen employed in an industrial establishment are governed by the Certified Standings Orders of the company. It is clearly provided in clause 23 of the Certified Standings Orders of the management that a workman on attaining the age of 58 years shall be considered to have attained the age of superannuation and shall be retired from the service of the factory.

12. For the reasons recorded above, it is held that the impugned action of the management retiring the workman on attaining the age of 58 years through order Ex. M-2 is legal and justified. Consequently, the workman is not entitled to any relief. The award is passed accordingly.

U.B. KHANDUJA,
Presiding Officer,

Dated the 7th December, 1994. , Labour Court-II, Faridabad.

Endorsement No. 3335, dated the 14th December, 1994.

A copy, with three spare copies, is forwarded to the Financial Commissioner and Secretary to the Government, Haryana, Labour Department, Chandigarh.

U.B. KHANDUJA,
Presiding Officer,
Labour Court-II, Faridabad.

No. 14/13/87-6 Lab./1126.--In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Faridabad, in respect of the dispute between the workman and the management of M/s. Executive Engineer, Huda, Division No. I, Versus Shri Nachhatar Singh.

IN THE COURT OF SHRI U.B. KHANDUJA, PRESIDING OFFICER,
LABOUR COURT-II, FARIDABAD

Ref. No. 415/92

Between

1. THE MANAGEMENT OF M/S. EXECUTIVE ENGINEER, HUDA,
DIVISION NO. I, SECTOR-15, FARIDABAD
2. S.D.E., HUDA, DIVISION SUB-DIVISION No. 6,
SECTOR-25, FARIDABAD

and

THE WORKMAN NAMELY SHRI NACHHATAR SINGH, S/O SHRI JASMER SINGH,
C/O SHRI ASHOK SHARMA, 2214/3, FARIDABAD

Present :

Shri Ashok Sharma, for the workman

Shri B.R. Sheoran, for the respondent.

AWARD

In exercise of the powers conferred by clause (c) of sub-section (i) of Section 10 of the Industrial Disputes Act, 1947 (herein-after referred to as 'the Act'), the Governor of Haryana referred the following dispute between the parties mentioned above, to this court for adjudication.--vide Haryana Government Endorsement No. 39884--90, dated 27th August, 1992 :--

Whether the termination of services of Shri Nachhatar Singh is legal and justified ? If not, to what relief, is he entitled to ?

2. The case of the workman is that he was appointed by the respondent No. 2 as Chowkidar on 1st September, 1989. He has been performing his duty to the satisfaction of respondent No. 2. On 19th February, 1992 he applied for his transfer to Ambala and he was transferred to Panchkula. He reported for duty at Panchkula but was not allowed to join duty and was ultimately sent back to Faridabad on the ground that there was no vacant post of Chowkidar at Panchkula. On 6th April, 1992 he reported back for duty at Faridabad and submitted an application for allowing him to resume duty but the matter was put off. Again on 22nd April, 1992 he submitted another application for assigning him the work but that was not done. His services were thus, illegally terminated in the aforesaid manner without making payment of retrenchment compensation and retaining the persons junior to him. He is thus, entitled to be reinstated into service with continuity in service and full back wages.

3. The respondent No. 2 submitted written statement raising four preliminary objections that the Haryana Urban Development Authority does not come under the definition of term 'industry' as defined in the Act, that the workman has no *locus standi* to file the present case, that the workman has no cause of action to file the

present case and that the workman had left the services himself and so was estopped from the filing the present application by his own act and conduct. It was further submitted that the workman was engaged on daily wages on temporary muster rolls and had been working in that capacity during the period from October 1989 to 18th February, 1992. With regard to the allegation of the workman regarding his transfer it was mentioned that the workman had made request for his transfer from Faridabad to Panchkula and the respondent No. 2 had forwarded his request to respondent No. 1 for consideration. The workman had not been transferred from Faridabad to Panchkula. The workman himself had not come to attend to his duty with effect from 19th February, 1992 without any information. In April, 1992 the maintenance work and connected staff was transferred to Faridabad complex Administration. There was thus, no post with the respondents against which the workman could be appointed.

4. The workman submitted rejoinder dated the 14th September, 1993 re-asserting the previous averments and denying the averments of the respondent No. 2.

5. On the pleadings of the parties, the following issues were framed :--

- (1) Whether the H.U.D.A. does not come within the definition of the term 'industry' as defined in section 2(J) of the Industrial Disputes Act ? OPM
- (2) Whether the workman has no locus standi to file the claim ? OPM
- (3) Whether the workman left the service of the management himself ? If so, its effect ? OPM
- (4) Whether the termination of services of Shri Nachhatar Singh is legal and justified ? If not, to what relief, is he entitled to ? (As per reference). OPM
- (5) Relief.
- (6) Both the sides have led evidence.

7. I have heard the authorised representatives of both the sides and have also gone through the evidence on record. My findings on the aforesaid issues are as under :--

Issue No. 1

8. A division bench of our own Hon'ble High Court has held in the case of management of Haryana Urban Development Authority versus Miss Neelam Kumari and others 1993 (2) PLR 552 that Haryana Urban Development Authority is an industry as defined in Section 2(J) of the Act. The authorised representative for the respondents has not been able to controvert this position. Consequently, Issue No. 1 is decided against the respondents and in favour of the workman.

Issue No. 2

9. The authorised representative of the respondents did not press for this issue during the course of arguments and as such this issue is decided against the respondents and in favour of the workman.

Issue No. 3, 4 and 5

10. These issues are interlinked and interdependent and as such are discussed together.

11. The respondents have examined only one witness Charan Jit Gulati, J.E. and he deposed facts mentioned above in the written statement. He further stated that the workman had submitted application dated 22nd April, 1992 Ex. M-2 for his appointment as Chowkidar but his request could not be accepted as the work regarding maintenance and the connected staff had already been transferred to the Faridabad Complex,--vide order dated 31st March, 1992 Ex. M-1.

12. On the other hand, the workman examined himself on oath and he deposed the facts mentioned in the demand notice. He also placed on record copy of his application dated 19th February, 1992 Ex. W-1 for his transfer to Panchkula, copy of application dated 6th April, 1992 Ex. W-2, copy of application dated 22nd April, 1992 Ex. W-3, another copy of application dated 22nd April, 1992 Ex. W-4, copy of letter dated 30th May, 1994 Ex. W-5, copy of letter dated 9th June, 1994 Ex. W-6 and copy of statement regarding service record of one Iqbal Singh Ex. W-7.

13. On the basis of aforesaid evidence, it has been contended on behalf of the respondents that it stands proved that the workman had never been transferred from Faridabad to Panchkula and that he had left the service of his own accord with effect from 19th February, 1992. It is also established that the workman had come back to resume duty on 22nd April, 1992 but he could not be assigned any job as the work and connected staff had been transferred to Faridabad Complex Administration with effect from 1st April, 1992 as per order Ex. M-1. The workman is thus, not entitled to any relief.

14. In reply it has been submitted on behalf of the workman that it is admitted by the respondent No. 2 in the written statement that the workman had made request for his transfer to Panchkula. The perusal of copy of muster roll for the month of January 1992 placed on file (though not exhibited) clearly shows that after 21st January, 1992 the workman was neither marked present by showing cross nor was shown absent by marking 'A' and a line was drawn against his name. This line clearly shows that the workman was transferred to Panchkula otherwise the workman should have been marked absent. It is also not indicated that the workman had left the services and this fact also shows that the workman had been transferred to Panchkula. The workman has stated on oath that the order regarding his transfer was given to him and he had passed on it in the office at Panchkula. The workman had clearly indicated in his applications dated 6th April, 1992 and dated 22nd April, 1992 that he was not taken on duty at Panchkula on the ground that there was no vacancy. In these circumstances, it was incumbent upon the respondents to take the workman back on duty and then transfer him to Faridabad Complex

Administration as was done in the case of other employees. The impugned action of the respondent by not allowing him to resume duty and to transfer him to Faridabad Complex Administration amounts to illegal termination of services. He is thus, entitled to be reinstated into service with continuity in service and full back wages.

15. It is not disputed that the workman had been engaged on daily wages basis. The workman has not led any evidence or has produced the copy of the rules or instructions to show that a workman appointed to daily wages basis could be transferred from one place to another. The workman has placed reliance on letters Ex. W-5 to Ex. W-6 issued in connection with appointment of one Iqbal Singh. The perusal of the letter dated 30th May, 1994 Ex. W-5 shows that Iqbal Singh had intimated the Sub-Divisional Engineer, HUDA Sub-Division No. 7, Panchkula that he had been working in the office of Sub-Divisional Engineer, HUDA, Sub-Division No. 6, Faridabad with effect from 3rd August, 1986 to August, 1991 and so the Sub-Engineer, Huda, Sub-Division No. 7 had summoned his record. This record was sent through letter Ex. W-6. It can not be concluded from these two letters that Iqbal Singh was transferred from Faridabad to Panchkula. Besides this as per the case of the workman himself he had applied for his transfer to Panchkula on 19th January, 1992 through application Ex. W-1. It can not be accepted that he was transferred on the next day without prior information from Panchkula office about the vacant post. Moreover the workman has not placed on record a copy of the transfer order or the plea that it was given by him at Panchkula. He could summon the record from Panchkula if he so desired. All these facts and circumstances clearly show that the workman had made request for his transfer to Panchkula but he was not actually transferred and the contention of the workman in this regard is an after thought.

16. It is not disputed that the workman had rendered services for a continuous period of more than 240 days during the period from October, 1989 to 20th January, 1992. It has been held by a division bench of our Hon'ble High Court in the case of management of Haryana Urban Development Authority Versus Miss Neelam Kumari 1993 (2) PLR 552 that a workman who completed 240 days in a calendar year will be treated as a regular employee. Applying the ratio of this case on the facts instant case the workman had become a regular employee. He should have been marked absent if he had not come to attend to his duty during the period from 21st January, 1992 to 31st March, 1992. It was also incumbent upon the respondents to initiate the disciplinary action against the workman on account of his absence from duty. It was necessary for the respondents to give an opportunity to the workman to show cause as to why he had been absent from duty. This procedure was not followed. The workman was not even marked absent. In this regard MW-1 Charan Jit Singh Gulati admitted in his cross-examination that the workman had told them that he was going to Panchkula to make efforts to have service there. This position clearly shows that the workman had gone to Panchkula with the tacit consent of his immediate officer. In these circumstances, the respondents were duty bound to allow the workman to resume duty and to treat his period of absence as leave without pay etc. The termination of services of the workman effected in the manner referred to above without making payment of retrenchment compensation is illegal and unjustified. Consequently, the workman is entitled to be reinstated into service with continuity in service without back wages. It may be added that the workman is not entitled to back wages as he himself had gone to

Panchkula without getting his transfer order or without getting leave sanctioned and secondly there has been no post with the respondents after April, 1992 on account of transfer of the work and staff to the Faridabad Complex Administration. The respondents shall be at liberty to transfer the workman to the Faridabad Complex Administration as was done in the case of other employees. The award is passed accordingly.

571
U.B. KHANDUJA,

The 5th December, 1994.

Presiding Officer,
Labour Court-II, Faridabad.

Endorsement No. 3401, dated the 19th December, 1994

A copy with three spare copies is forwarded to the Financial Commissioner and Secretary to Government Haryana, Labour Department, Chandigarh.

U.B. KHANDUJA,

Presiding Officer,
Labour Court-II, Faridabad.

No. 14/13/87-6Lab/1128.--In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Faridabad in respect of the dispute between the workman and the management of M/s Remington Rand of India Ltd., v/s Sh. Indu Nath Mishra, M.A.

IN THE COURT OF SHRI U.B. KHANDUJA, PRESIDING OFFICER,
LABOUR COURT-II, FARIDABAD.

Ref. No. 69/93

Between

THE MANAGEMENT OF M/S REMINGTON RAND OF INDIA LTD. PLOT NO. 3,
SECTOR-6, MATHURA ROAD, FARIDABAD.

and

THE WORKMAN NAMELY SHRI INDU NATH MISHRA, M.A., LL.B., 6-A,
TEJPUR PAHARI, BUDH BIHAR, BADARPUR, NEW DELHI.

Present:--Shri Duli Chand, for the workman.
None for the management.

AWARD

In exercise of the powers conferred by clause(C) of sub-section(i) of section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act'), the Governor of Haryana referred the following dispute between the parties mentioned above, to this court for

adjudication,--vide Haryana Government Endst. No. 4689-94, dated 4th February, 1993:--

Whether the termination of services of Shri Indu Nath Mishra is legal & justified ? If not, to what relief, is he entitled to ?

2. Briefly stated the case of the workman is that he was engaged by the management w.e.f. 21st June, 1992 as Purchase Officer but in fact he was assigned the duties and obligations of a workman defined in the Act. His last drawn salary was Rs. 4,300 P.M. He had been discharging his obligations diligently honestly and never give any chance of complaint about his work and conduct. Somehow or the other he became an eye sore of the management and the management had an evil eye on him and wanted to punish him for no fault. In pursuance of the determination the management asked him to see the General Manager (Personnel) at Calcutta, on 10th January, 1992. He reported there. He was forced to resign and paid three months notice pay. The management appointed one C. Dass Gupta on 10th January, 1992 itself as Purchase Officer in his place. This fact clearly shows that he had not tendered the resignation voluntarily. Thus, he is entitled to be reinstated into service with full back wages and continuity in service.

3. The management submitted written statement stating therein that the claimant was assigned duty of Purchase Officer requiring imaginative and creative mind which were neither manual skilled or unskilled or clerical in nature and so the claimant is not a workman as defined in Section 2(S) of the Act. The claimant had visited Calcutta as usual in the discharge of his duty and had submitted his resignation to the General Manager (P) and it was duly accepted. The communication regarding acceptance of resignation was conveyed to him,--vide letter dated 13th January, 1992 and thereafter he submitted an application for payment of gratuity. This fact clearly shows that the claimant had tendered the resignation voluntarily. The appointment of C. Dass Gupta as Purchase Officer was made in place of the claimant as the job of the Purchase Officer was of important nature. He is thus, not entitled to any relief.

4. The claimant submitted rejoinder dated 16th May, 1994 re-asserting the previous averments and denying the averments of the management.

5. On 7th September, 1994 none appeared for the management and as such it was ordered that the management be proceeded against ex parte. The claimant has examined himself in ex parte evidence and he deposed the facts mentioned above.

6. I have heard the authorised representative of the claimant and have also gone through his statement.

7. It has been stated by the claimant on oath that no workman used to work under him and he used to make Purchases himself. It is thus, obvious that the workman was not having control or supervision over any worker. That being so, it is concluded that he was a workman as defined under Section 2(S) of the Act.

8. The version given by the claimant that the resignation was obtained from him under duress does not appear to be correct. This

697

observation is based on the ground that the claimant is a law graduate as shown in his pad paper of application dated 20th April, 1992 Ex.W-1. He was asked to submit resignation at Calcutta on 10th January, 1992. It was incumbent upon him to make complaint to the Labour Officer or to the Police or other authority soon after coming back to Faridabad. He did not do so and submitted application Ex.W-1 after lapse of more than three months. In this application too he stated that he had tendered resignation under fear when three persons stood behind him and started threatening him of his life. He however, stated in his statement made in the court that 4-5 persons sitting with General Manager (P) in his room had threatened him that he should tender resignation otherwise consequences shall be very bad. Again the workman stated in his application Ex.W.1 that he was an old man of 50 years but he stated his age 43 years in the statement made in the court. Moreover the tenor of the letter/complaint Ex.W-1 also clearly shows that the claimant was more sore about the non-payment of his dues and non submission of reply to his letter rather than the factum of taking resignation from him. Keeping in view all the facts and circumstances, it is held that the claimant had tendered the resignation voluntarily and not under duress. Resultantly the claimant is not entitled to any relief. The award is passed accordingly.

Dated the 8th December, 1994.

U.B. Khanduja,
Presiding Officer,
Labour Court-II,
Faridabad.

Endorsement No. 3400, dated the 19th December, 1994.

A copy with three spare copies is forwarded to the Financial Commissioner and Secretary to Government Haryana, Labour Department Chandigarh.

U.B. Khanduja,
Presiding Officer,
Labour Court-II,
Faridabad.

No. 14/13/87-6Lab./1135.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s G.M. Milk Plant, Rohtak versus Balwan Singh.

IN THE COURT OF SHRI P.L. KHANDUJA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ROHTAK.

Reference No. 541 of 1989

between

BALWAN SINGH, S/O SHRI DHARAM SINGH, V.P.O. LADHOT,
DISTRICT ROHTAK. Workman
and

THE MANAGEMENT OF M/S GENERAL MANAGER, MILK PLANT, ROHTAK

Present :

Shri R.C. Siwach, A.R. for the workman.

Shri M.C. Bhardwaj, A.R. for the management.

AWARD

In exercise of powers conferred by sub-clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana has referred the following dispute, between the parties, named above, to this Court for adjudication, --vide Labour Department Endst. No. SOV/Ro/139-89/49559--64, dated 6th November, 1989 :-

Whether the termination of services of Shri Balwan Singh is justified and in order ? If not, to what relief he is entitled ?

2. The workman and the management were summoned. The workman appeared and filed the claim statement that he worked with the respondent-management from 21st September, 1987 to 30th November, 1988 on the pay of Rs. 630 P.M. as diaryman. On 1st December, 1988 when he had gone to the factory to join the duty the management had refused to him to allow the duty. The workman had been going to the management upto 5th December, 1988 but he was not heard. The workman had filed demand notice. The management has filed an application on 17th December, 1988 before Labour Officer-cum-Conciliation Officer. When the management represented that workman had worked for 179 days and then the demand notice was rejected. The applicant/workman had filed an appeal before Labour Commissioner on 30th June, 1989. As the workman had served for 240 days in a year but he was removed without notice, notice pay, without retrenchment compensation which is illegal and hence the claim statement was filed.

3. The written statement is filed by the management that the workman is not a workman as defined in the I.D. Act. He was only a contractual part-time employee engaged to do specified jobs and he did not work 240 days in the plant in a year, therefore, the provisions of Section 2(oo) and Section 25-F of the I.D. Act is not applicable as claimed by him. It is denied that he was a diaryman. During this period he worked for 8 days in the month of November, 1987. He attended the work for December, 1987 to March, 1988. In the month of April he worked only for 16 days, in June for 22 days and in July for 11 days only. He did not work in the month of May and August to November, 1988 as alleged. Hence the claim statement be dismissed.

4. Replication was filed by the workman. On the pleadings of the parties, the following issues were framed :--

- (1) As per terms of reference ?
- (2) Whether the petitioner is workman ?
- (3) Relief ?

5. My findings on the above issues with reasons thereof are as under :--

Issues No. 1 & 2 :

6. Both these issues are inter-connected and taken up for decision together.

7. The workman has examined Shri Nand Lal, Head Assistant of the management as WW-1, WW-2 Ashok Kumar, S/o Shri Ram Phul, WW-3 Rohtas, S/o Zile Singh who was working in the Milk Plant and Balwan Singh applicant has come into witness-box as WW-4. The management has examined Shri Mohinder Singh, Assistant as MW-1 and also examined Bishamber Singh, S/o Shri Shiv Lal as MW-2 and the evidence of the management was thereafter closed.

8. The first question for decision before me is whether the workman had worked for 240 days in a year or not. The case of the workman is that he was removed from job without compliance of section 25-F of the I.D. Act. The management has pleaded that the workman had worked for 172 days in a year and does not pleaded in the written statement that the notice given or notice pay was given, retrenchment compensation was given or enquiry was held in compliance of section 25-F of the I.D. Act.

9. The learned A.R. for the workman made submission that when the management denied the factum that the workman was working as in Ex. WW-4/1 but admitted by the management in written statement the workman produced on the record Ex. W-1 to Ex. W-4 showing that he had been working with the management. Ex. W-6 is the photocopy of the receipt of payments made to Rameshwar, Ashok, Karamvir, Paras Nath for work done with the management this person has been shown to be labourer. It has been shown in Ex. W-7 to Ex. W-10 the photocopy of the working of the workman in the month of November, 1987 for nine days. From Ex. W-11 photo copy of the roll of Boiler section it has shown that Balwan Singh worked for 8 days in the month of September, 1987. Ex. W-12 is statement for the month of September, 1987 Balwan Singh is shown to have worked Photo copy of the roll which is Ex. W-13 when Balwan Singh is shown to have worked for 27 days. Ex. W-15 is the photo copy of the general maintainence record showing Balwan Singh had worked upto 1st September, 1988.

10. The learned A.R. for the workman contended that the management official had done mis-chief in writing Balwant Singh, S/o Dhar Singh when infact that Balwant singh S/o Dhara Singh worked and the thumb impression of Balwan Singh there. I have gone through the writing on the word Balwant Singh. It does not seem to be Balwant Singh. It may be Balwan Singh because words 'N' and Singh are clear and others words are not clear. Hence it is proved that it is not

Balwant Singh, it is Balwan Singh or Pehlwan Singh. The learned A.R. for the workman further made submission that when MW-1 Mohinder Singh Assistant admits that workman/applicant had worked as shown in Ex. W-15. He further admitted that in the month of October, 1987 the workman had worked for 27 days. In the written statement, it is denied that the workman had worked for 27 days like wise the applicant workman is said to have worked in the month of November, 1987 and he got payment of Rs. 171 but the workman is not shown to work in the written statement, again he admitted that the workman had worked for 29 days in the month of November, 1987. He also admitted that when so ever the applicant worked but not on contract basis. There is no written agreement between the contractor of the workman. He could not tell whether and there is written agreement between the workman-management or he could not tell as to when the workman used to work on behalf of the contractor. He also could not tell whether any contract was given during this period when the workman was employed as diaryman.

11. MW-2 Bishamber Dass made statement that the management was under N.D.D.B. and it was not the management Haryana Dairy but N.D.D.B. used to employ the workman on contract basis. He also admitted that N.D.D.B. had been existance in March, 1985 to March, 1988 but the workman is claiming that he was appointed as dairyman after March, 1988. It is proved that workman is not the person working under the N.D.D.B. Scheme, but he was working with the respondent/management.

12. It is proved from the evidence that the workman was not working under N.D.D.B. scheme but he was working with the respondent/management. Which thus state controlled body. Hence this Court has very much jurisdiction to decide the dispute.

13. The learned A.R. for the workman has made submission from evidence on record that the workman has worked for 240 days as under :--

September, 88--8 days, October, 87--27 days, November, 87--29 days, December, 87--31 days, January, 88--31 days, February, 88--20 days, March, 88--31 days, April, 88--16 days, June, 88--22 days, July, 88--11 days and September, 1988--16 days.

14. There are the days which the workman had worked for but these days are coming in 13 months. I am to consider to 12 months. 12 months are considered even than the workman has worked for about 243 days. The learned A.R. for the management has submitted that the applicant has not able to prove this assertion from the oral or documentary evidence. But the statement of MW-1 Mohinder Singh makes it clear that the workman had worked during the month of October, 1987 and worked 27 days in the month of October, 1987. He also admitted that the workman had worked in following months of December, 1987 to March, 1988. Mohinder Singh also admitted that the workman had worked in the year 1983 to 1987 and the workman was appointed in the year 1987. When MW-1 admitting that workman had worked in the month of October, 1987, the statement of that he was appointed in November, 1987 is incorrect.

15. Now the question arises whether the workman was working on contractual basis. The management has examined the evidence that the management of Milk Plant was taken over by the present management after the month of March, 1987 and upto 1987 N.D.D.B. was controlling the Milk Plant. There is no evidence at all on record to prove that there was a contract entered between the parties. The question is whether the workman had worked in the month of October, 1987. Mohinder Singh admitted that the workman had worked in the month of September, 1987 and during September, 1987 it is not considered but if he continued from October, 1987 to September, 1988 the workman had worked for more than 240 days in 12 calender months which I hold it so. I decide these issues in favour of the workman and against the management.

Issue No. 3 (Relief) :

16. In view of my findings of the above issues I accept the reference petition and claim statement and I order that the workman is entitled to the work with continuity of services but with 50% (FIFTY) of back wages. The reference is answered and returned accordingly. The parties are left to bear their own costs.

The 28th November, 1994.

P.L. KHANDUJA,
Presiding Officer,
Industrial Tribunal/Labour Court,
Rohtak.

Endstt. No. ref. 541-89/2956, dated 30th November, 1994.

Forwarded (four copies) to the Secretary to Government Haryana, Labour & Employment Departments, Chandigarh.

P.L. KHANDUJA,
Presiding Officer,
Industrial Tribunal/Labour Court,
Rohtak.

No. 14/13/87-6Lab/1136.--In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Faridabad-I in respect of the dispute between the workman and the management of M/s. Stud Electricals, Faridabad Versus Sh. Rajesh Kumar.

BEFORE SHRI N.L. PRUTHI, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL
CUM-LABOUR COURT-I, FARIDABAD

Ref. No. 463 of 91

In the matter of Industrial Dispute

between

SHRI RAJESH KUMAR, R/O H.NO. 1025, GALI NO. 2,
BHUD COLONY, OLD FARIDABAD

and

M/S STUD ELECTRICALS, PLOT NO. 18,
SECTOR 27-A, FARIDABAD

Present:-- Shri Sudhir Chauhan, Authorised Representative, for the Workman.

Shri K.P. Aggarwal, Authorised Representative, for the Management.

AWARD

Under the provisions of Section 10(1)(a) of Industrial Disputes Act, 1947, the Government of Haryana have,--vide endorsement No. ID/FD/194-91/41579-84, dated 3rd December, 1991 referred the following dispute between the parties above named for adjudication:--

Whether the termination of services of Shri Rajesh Kumar is legal and justified. If not, to what relief he is entitled ?

2. The case of the workman is that he had been working as Moulder with the Management with effect from 6th August, 1988 and his last drawn wages were Rs. 895 per month and that during his service period he had never given a cause of any complaint. It is also his case that no appointment letter was issued to him although his signatures were obtained on so many blank papers, forms and vouchers. His allegation is that when he had come for duty on 25th June, 1991, he was told that since there was slump in production, he should come after a day or two and in this way continued putting him off and ultimately on 20th July, 1991 refused to take him back to duty in an illegal and wrongful manner. A complaint was lodged by him in that regard with the Labour Inspector on that very day but the Management did not turn up on the date fixed by the Labour Inspector viz, 24th July, 1991. It is on these facts that the workman has claimed his reinstatement with continuity of service and full back wages.

3. Stand of the Management, on the other hand, is that it manufactures electric goods which work is of seasonal nature. It employs workers on casual/temporary basis from time to time as per production exigency. According to Management, workman Rajesh Kumar was employed purely as a temporary Helper four times; firstly from 5th September, 1988 to 9th September, 1989, secondly from 26th September, 1989 to 19th May, 1990, thirdly from 4th June, 1990 to 30th November, 1990 and fourthly from 17th December, 1990 to 24th June, 1991 and on completion of each term of his temporary service, the

workman had collected his full and final dues as under and nothing is now due to him:--

Rs. 518.80 on 9.9.1989 For leave and wages.
Rs. 569.70 on 19.5.1990 For leave and wages.
Rs. 783.70 on 1.12.1990 For leave and wages.
Rs. 1,101.80 on 27.6.1991 For leave and wages.

It has been denied that the workman was appointed as a Moulder w.e.f. 6th August, 1988 or that his signatures were obtained on any of the blank papers.

4. In the rejoinder, pleas taken in the demand notice have been reiterated while those in the written statement controverted.

5. On the pleadings of the parties, following issues were framed on 7th April, 1992 :--

(1) As per reference.

(2) Whether the workman has accepted full and final settlement from the management ?

6. I have heard Authorised representatives for the parties and perused facts on record. My findings on each of the issues with reasons therefore are as under :--

Issue No. 2:

7. In his examination as WW-1, the workman admitted his signatures on letters Ex.M-1, Ex.M-4, Ex.M-7 and Ex.M-10 indicating that he wanted to leave service to enable him to go to his native village and that his accounts should be settled. However, he denied that the writing thereon was in own hand and rather alleged that his signatures were obtained on blank papers at the time of his initial appointment. The workman also admitted his signatures on the revenue stamps affixed on Ex.M-3, Ex.M-6, Ex.M-9 and Ex.M-12 which are full and final payment receipts. Ex.M-2, Ex.M-5, Ex.M-8 and Ex.M-11 are vouchers of payment bearing signatures of workman and proved by Ashok Suneja (MW-1). In his examination as WW-11 the workman admitted his signatures on all the vouchers but stated that his signatures were obtained on blank vouchers at the time of his appointment. The workman, however, admitted receipt of one payment of Rs. 518.80 on 9th September, 1989 (receipt Ex.M-3 and voucher Ex.M-2) and denied the rest of three payments. This stand of the workman of having not received payments can not be accepted firstly because the payments are shown to have been made to the workman in the presence of his co-workman namely Jawahar Lal Helper who had witnessed receipts Ex.M-3 and Ex.M-12, while receipt Ex.M-6 was witnessed by Suraj Nath workman of assembly section and receipt Ex.M-9 by Rishi Kumar. While being examined as WW-1 the workman did not utter a word that the above said co-workers were inimical towards him. He also admitted having not made a complaint anywhere that his signatures were obtained on blank vouchers. The letters Ex.M-1, Ex.M-4, Ex.M-7 and Ex.M-10 show no gaps between the signatures and writing and so this does not suggest that the writing was made long after signatures had

been taken on blank papers. More so, these documents are in Hindi and being a Matriculate, the workman knows Hindi Language. All the 12 documents namely letter showing inclination to leave service, receipts and vouchers are of different dates and could not be got signed from the workman at the time of his initial appointment. Therefore, an irresistible conclusion that can be drawn is that the workman had himself executed all the above said documents. He had left the job four times and had received full and final payment every time he had left the job. When such is the situation the workman is estopped from raising the dispute again and should be taken to have waived his right. It was so held in Andhra Laundry (Prop. R.A. Masllamani and Additional Labour Court Madras) 1968 LLJ 356.

8. No evidence has been led by the workman to prove his contention that there were breaks in his service and that his service was continuous from 6th August, 1988 to 25th June, 1991. It is pertinent to mention here that in the demand notice the workman has given his date of appointment as 6th August, 1988 but in his statement recorded on oath he has indicated his date of appointment as 6th June, 1988. So, when the stand of the workman is itself discrepant, the date of appointment viz, 5th September, 1988 as indicated by the Management has to be accepted. In his examination as WW-1 the workman stated that deductions on account of ESI and P.F. were made from his wages continuously during the period from 1988 to 1991. Deduction on this account are also shown to have been made in four of the vouchers, viz, Ex.M-2, Ex.M-5, Ex.M-8 and Ex.M-11 regarding payment of full and final payment but these alone are not sufficient to prove that the service of the workman had been continuous. The best proof which the workman could adduce was to call in the witness box an official from ESI and P.F. Office with record. So, in the absence of record, oral statement of the workman cannot be accepted as a proof of his contention. As such, his service being not continuous, the last spell of his service viz, from 17th December, 1990 to 24th June, 1991 cannot be joined with his earlier spell from 4th June, 1990 to 30th November, 1990 even for the purpose of calculation 240 days. So, on this account he is not entitled to any retrenchment compensation even. In the absence of any plea that the work was continuing or his repeated appointment was a mere device to deny him regular status, the same does not amount to unfair labour practice. It was so held in Satpal Singh Versus Union of India and Others 1990(7) SLR 112. In the present case Ashok Suneja examined as MW-1 stated that after the exit of the workman no one else was appointed

9. As such, in view of factual and legal position discussed above, it is held that the workman had accepted full and final payment and this issue is decided in favour of the Management and against the workman.

Issue No. 1:

10. In view of my findings on issue No. 1 it is held that the Management had not terminated the services of the workman. The workman had himself left the job and collected his full and final dues. He is thus, not entitled to any relief. An award is passed accordingly.

The 14th December, 1994.

N.L. PRUTHI,
Presiding Officer,
Industrial Tribunal Cum-
Labour Court-I, Faridabad.

Endorsement No. 2991 dated the 20th December, 1994

A copy, with three spare copies, is forwarded to the Commissioner and Secretary to Government of Haryana, Labour Department, Chandigarh.

N.L. PRUTHI,
Presiding Officer,
Industrial Tribunal cum,
Labour Court-I, Faridabad.

No. 14/13/87-6 Lab/1138.--In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court-I, Faridabad in respect of the dispute between the workman and the management of M/s. Janta Furniture House versus Shri Kirpa Shankar, c/o C.L. Oberai, Faridabad.

BEFORE SHRI N.L. PRUTHI, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, FARIDABAD

Reference No. 115 of 89

In the matter of industrial dispute

between

SHRI KIRPA SHANKAR PANDEY, C/O SHRI C.L. OBERAI, GENERAL
SECRETARY INTUC, DISTRICT COUNCIL, 1-A/119,
N.I.T., FARIDABAD

and

M/S JANTA FURNITURE HOUSE, C-28, NEHRU GROUND, N.I.T.,
FARIDABAD

Present :

Sh. Pardeep Sharma, Authorised Representative for Management.
Workman ex parte.

AWARD

Under the provisions of Section 10(1) of Industrial Disputes Act, 1947, the Government of Haryana have,--vide Endorsement No. OV/FD/45-89/10672-77, dated 9th March, 1989, referred the following dispute between the parties above named for adjudication :--

Whether the termination/retrenchment of Shri Kirpa Pandey is legal and justified. If not, to what relief he is entitled ?

2. The case of the workman is that he was a permanent employee of the Management and had been working with it as a Polisher since January, 1974 and his last drawn wages were Rs. 700 p.m. The Management did not pay him his wages for the month of August, 1988 for which he had sent a legal notice. The Management got annoyed over it and terminated his service with effect from 4th October, 1988. This all was done in a revengeful manner without issuance of a notice or paying him

compensation u/s 25F of the Industrial Dispute Act. It is on these facts that the workman has claimed his reinstatement with continuity of service and full back wages.

3. The defence taken by the Management is that the workman was never its employee and has filed a false claim to cause harassment. This fact of non-existence of relationship of master and servant was also highlighted in the written comments furnished by the Management before the Deputy Labour Commissioner. Further stand of the Management is that when there did not exist relationship of employer and employee, the reference is bad in law.

4. In the rejoinder, please taken in the demand notice have been reiterated while those in the written statement controverted.

5. On the pleadings of the parties, following issues were framed on 17th January, 1994 :--

(1) As per reference. OP Parties.

(2) Whether there was relationship of employer and employee between the parties ? OPW

6. I have heard Authorised Representative for the Management and persued the statement made on oath by the workman before he was proceeded ex parte as also the evidence led by the Management. My findings on the issues framed with reasons therefor are as under :--

Issue No. 2:

7. Joginder Singh Proprietor examined as MW-1 stated that he had shifted his business to Chandigarh in the year, 1989, after closing his firm viz, Janta Furniture at Faridabad. He further stated that his business was of Trading and workman Kirpa Shankar Pandey was not in his employment and that the latter has filed a false claim just to blackmail him. In his examination as WW-1, the workman reiterated the facts as are contained in his demand notice but admitted in his cross-examination that he had not made a complaint to the Labour Department that the Management had not entered his name in the attendance register. He also admitted that he did not have ESI card. The un-rebutted evidence led by the Management coupled with the admissions made by the workman show it that the workman had never remained in the employment of the management. Therefore, holding that there did not exist relationship of employer and employee between the parties, this issue is decided against the workman and in favour of the management.

Issue No. 1.

8. As per findings on Issue No. 2, there did not exist relationship of employer and employee between the parties. Therefore, there does not arise the question of termination of the services of the workman and for that matter he is not entitled to any relief. An award is passed accordingly.

N.L. PRUTHI,

Presiding Officer,
Industrial Tribunal-cum-Labour Court-I,
Faridabad.

The 30th November, 1994.

Endorsement No. 3903, dated the 30th November, 1994.

A copy with, three spare copies is forwarded to the Commissioner and Secretary to Government Haryana, Labour Department, Chandigarh.

N.L. PRUTHI,
Presiding Officer,
Industrial Tribunal-cum-Labour Court-I,
Faridabad.

No. 14/13/87-6 Lab/1139.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court-I, Faridabad in respect of the dispute between the workman and the management of M/s. Calbro Manufacturing Co. versus Sh. Bhoop Singh, Faridabad.

BEFORE SH. N.L. PRUTHI, PRESIDING OFFICER,
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, FARIDABAD.

Reference No. 251 of 90

IN THE MATTER OF INDUSTRIAL DISPUTE

between

SHRI BHOOP SINGH C/O FARIDABAD KAMGAR UNION,
C.I.T.U. OFFICE, BHUD COLONY, OLD FARIDABAD

And

M/S CALBRO MANUFACTURING CO., C-143,
FIROJ GANDHI NAGAR, FARIDABAD

Present :

Workman with Authorised Representative Sh. Amar Singh Sharma.

Sh. Jagjit Singh with Authorised Representative Sh. S.S. Saini.

AWARD

Under the provisions of Section 10(1)(c) of Industrial Disputes Act, 1947, the Government of Haryana have,—vide Endorsement No. OV/FD/184-89/36731--36, dated 14th September, 1990 referred the following dispute between the parties above named for adjudication :—

Whether the termination of services of Sh. Bhoop Singh is legal and justified. If not, to what relief he is entitled ?

2. The matter has been settled between the parties. In pursuance thereof the workman has been paid an amount of Rs. 6000 (Six Thousand Only) in cash in full and final settlement of his claim in the court. His statement also recorded. No. more dispute now survives in this case. An award is passed accordingly.

N.L. PRUTHI,

Dated the 15th December, 1994.

Presiding Officer,
Industrial Tribunal -cum-Labour Court-I,
Faridabad.

Endorsement No. 3967, dated the 15th December, 1994.

A copy with three spare copies, is forwarded to the Commissioner and Secretary to Government of Haryana, Labour Department Chandigarh.

N.L. PRUTHI,

Presiding Officer,
Industrial Tribunal-cum-Labour Court-I,
Faridabad.

No. 14/13/87-6 Lab/1140.--In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act. No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer Industrial Tribunal-cum-Labour Court-I, Faridabad in respect of the dispute between the workman and the management of M/s. S.K. Boss-N-Moon Pvt. Ltd. versus Ved Parkash, Faridabad.

BEFORE SHRI N.L. PRUTHI, PRESIDING OFFICER,
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, FARIDABAD.

Reference No. 173 of 94

IN THE MATTER OF INDUSTRIAL DISPUTE

Between

SH. VED PARKASH C/O H.M.K. PANCHAYAT,
0/3 LINK ROAD, SECTOR 28, FARIDABAD.

And

M/S S.K. BOSS-N-MOON PVT. LTD.,
4, NEELAM BATA ROAD, FARIDABAD.

Present :

None.

AWARD

Under the provisions of Section 10(1) of Industrial Disputes Act, 1947, the Government of Haryana have,--vide Endorsement No. ID/FD/15-94/12313-12, dated 24th March, 1994 referred the following dispute between the parties above mentioned for adjudication :--

Whether the termination of services of Sh. Ved Parkash is legal and justified. If not, to what relief he is entitled ?

2. In this case notices have been issued to both the parties four times but no one has put in appearance. This shows that the parties are not interested to pursue the matter. The case is, therefore, dismissed for want of prosecution. In result, 'No Claim Award' is hereby passed.

N.L. PRUTHI,

Dated : 9th December, 1994.

Presiding Officer,
Industrial Tribunal-cum-Labour Court-I,
Faridabad.

Endorsement No. 3968, dated the 15th December, 1994.

A copy with, three spare copies, is forwarded to the Commissioner and Secretary to Government of Haryana, Labour Department Chandigarh.

N.L. PRUTHI,
Presiding Officer,
Industrial Tribunal-cum-Labour Court-I,
Faridabad.

No. 14/13/87-6Lab./1148.--In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court I, Faridabad, in respect of the dispute between the workman and the management of M/s Gurera Gas Cylinders Pvt. Ltd., versus Shri Jamiluddin, son of Shri Gulfam, Faridabad.

BEFORE SHRI N.L. PARUTHI, PREDIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, FARIDABAD

Reference No. 13 of 91

IN THE MATTER OF INDUSTRIAL DISPUTE.

between

SHRI JAMILUDDIN, S/O SHRI GULFAM, C/O SHRI ASHOK SHARMA,
HOUSE NO. 2214, SECTOR 3, FARIDABAD

and

M/S GURERA GAS CYLINDERS PVT. LTD.,
PLOT NO. 133, SECTOR 24, FARIDABAD

Present :

Shri Ashok Sharma AR, for the workman.

Shri Jagbir Bhadana AR, for the Management.

AWARD

Under the provisions of section 10(1)(d) of Industrial Disputes Act, 1947, the Government of Haryana have,--vide Endorsement No. OV/FD/172-90/48758-63, dated 27th December, 1990 referred the following dispute between the parties above mentioned for adjudication :--

Whether Shri Jamiluddin had abandoned his service by remaining absent or his services were terminated and to what relief he is entitled ?

2. The case of the workman is that he was appointed as Helper on monthly wages of Rs. 385 in the year 1983. The Management did not allow him to resume duty on 18th November, 1984 and he moved a demand notice on which the matter was referred to the Labour Court Faridabad bearing reference No. 445 of 1985. The Labour Court ordered his reinstatement with continuity of service and full back wages,--vide orders dated 12th September, 1988. Thereafter the workman approached the Management to allow him to resume

duty but the Management paid no heed. The workman then moved the Labour Department for implementation of the award. The Management is alleged to have taken a stand before the Labour-cum-Conciliation Officer, that it had lost faith in the workman and could not take the risk to re-employ him on its costly machins. Lateron, the persuasion of the Labour-cum-Conciliation Officer, the Management agreed to take him on duty with effect from 25th March, 1989. The Management did not honour its commitment and the matter was again taken to the Labour Department. Ultimately the workman was taken on duty on 24th April, 1989 in the presence of Virender Singh, Clerk of the Labour Inspector and the authorised representative of the workman who had accompanied him to ensure that the workman was allowed to join duty. The allegation of the workman is that instead of assigning any job to him he was made to stand in the heat of the sun and ultimately was shunted out from service on 26th April, 1989. The workman had been going to the factory thereafter quite a number of times, but was not taken back. He had then filed a demand notice on which present reference was made. The workman has claimed his reinstatement with continuity of service and full back wages.

3. Stand taken by the Management in its written statement is that for the sake of implementation of the award dated 12th September, 1988, it had written many letters to the workman to join duty but for one reason or the other the later had not joined. Even during the conciliation meetings the workman was asked to join his duties but every time he refused to join duties even in the presence of the Conciliation Officer. The Management also contends to have offered duties to the workman and asked his representative to accompany him, but neither the workman nor his representative came to the factory for duty. However, the claimant joined his duties on 24th April, 1989, but at 12.30 p.m. on 26th April, 1989 disappeared from the factory without any intimation. The Management contends to have sent many call letters by post including one sent under Registered cover but the workman had neither joined duty nor sent any reply. Money Order for Rs. 2,337.85 on account of all his dues was also sent to him but the letter and money order were received back with the report of refusal. The Management was thus compelled by the continued absence of the workman for over a year since after 26th April, 1989 that it struck off the name of the workman from the muster rolls with effect from 10th May, 1990. Other objections taken are that this court has no jurisdiction, the reference is bad in law and the claimant has not come to the court with clean hands. It has also been contended by the Management that the workman is gainfully employed.

4. In the rejoinder, pleas taken in the claim statement have been reiterated while those in the written statement controverted.

5. On the pleadings of the parties following issues were framed on 9th May, 1991 :--

(1) As per reference.	OP Parties.
(2) Whether the reference is bad in law ?	OPM
(3) Whether the workman is gainfully employed ?	OPM
(4) Whether this court has no jurisdiction in the matter ?	OPM

6. I have perused written notes furnished by both the parties, evidence led by them as also other facts on record. My findings on each of the issues with reasons therefor are as under :--

Issue No. 1:

7. Quite a lot of evidence has been led by the Management to show that the workman was never interested in service and had himself abandoned his job. B.S. Nirman Assistant Manager (Personnel) examined as MW-1 stated that immediately after the Management had come to know of award Ex.M-1 of 12th September, 1988, it had sent a telegram Ex.M-2 of 31st December, 1988 to the workman to join duty. Thereafter, letters dated 7th January, 1989 (M-4), 29th January, 1989 (M-5), 20th February, 1989 (M-6), 5th March, 1989 (M-7) were sent to the workman to come and join duty. A registered letter dated 25th March, 1989 (M-8) was also sent to the workman but the same was received back with the report Ex.M-10 of the Post Office that the addressee was not available at the address given. Letters Ex. M-9 of 25th March, 1989 and Ex. M-11 of 28th March, 1989 were sent to Labour-cum-Conciliation Officer to direct the workman to join duty, but to no effect. The witness stated that even during conciliation proceedings, the workman was asked to resume duty, but he did not do so. Even, thereafter, letters dated 29th March, 1989 (Ex.M-16), 30th March, 1989 (M-17), 3rd April, 1989 (M-20), 4th April, 1989 (M-21), 5th April, 1989 (M-22), 6th April, 1989 (M-23), 7th April, 1989 (M-24), 8th April, 1989 (M-25), 10th April, 1989 (M-27), 11th April, 1989 (M-28), 13th April, 1989 (Ex.M-42) and of 15th April, 1989 (Ex.M-45) were sent under certificate of posting to the Labour-cum-Conciliation Officer informing him that the workman was not joining duties and should be directed to do so for the sake of implementation of the award. Copies of letters Ex. M-15 to M-28 were sent to the workman also. Copies of UPC receipts are Ex.M-29 to M-41. The witness also stated that copy of letter Ex.M42 of 13th April, 1989 addressed to the Labour-cum-Conciliation Officer was sent to Ashok Sharma, authorised representative of the workman as well. The copy sent to Ashok Sharma was received back undelivered and the same is Ex. M-43. Ex. M-45 is the copy of letter dated 15th April, 1989 which the Management had written to the Labour Officer with a request to look into the matter personally and send the workman alongwith some one from his office to report for duty in time. Copy of this letter was sent to the Labour Commissioner, Haryana as also Secretary Labour and Employment. Ex. M-47 is copy of letter dated 24th April, 1989 of the Management to the Labour-cum-Conciliation Officer wherein it was intimated that the workman accompanied by Virender Singh, Head Clerk came to the factory and was taken on duty and thus the award stood implemented. The witness further stated that the workman gave a slip during lunch hours on 26th April, 1989 and did not turn up despite issuance of letters. Ex. M-51 is copy of letter dated 27th April, 1989 addressed to Labour Inspector with a copy to the workman about the absence of workman from duty. Ex. M-53 is a copy of letter dated 6th May, 1989 written to the workman to join duty. Its copies were sent to the Labour-cum-Conciliation Officer as also to Ashok Sharma, authorised representative of the workman. Therein, Ashok Sharma was requested to advise the workman to report for duty. Ex.M-58 is a copy of letter dated 27th June, 1989 sent to the workman under Regd./A.D. cover to inform if he was interested in service or not and should also collect his wages for 2½ days of work which he had put in from 24th April, 1989 to 26th April, 1989. Copy thereof was sent to Ashok Sharma authorised representative of the workman as also to the Labour Officer for their information. Other letters written to the workman to come and join duty are Ex. M-59 of 31st May, 1989, Ex. M-64 of 9th August, 1989, Ex. M-65 of 29th September, 1989, Ex. M-66 of 10th November, 1989, Ex. M-67 of 23rd December, 1989, Ex. M-68 of 23rd January, 1990, Ex. M-69 and M-70 of 9th March, 1990, Ex.

M-71 of 12th April, 1990. The witness also stated that when despite issuance of numerous letters, the workman had not turned up to join duty, Regd. A.D. letter Ex. M-82 was written to the workman on 10th May, 1990 informing him about the loss of lien. In this letter there is also a mention that Management presumed that he was no longer interested in service of the company and had lost lien of his own accord by way of abandonment. Consequently, his name was being struck off from the Muster rolls with effect from 10th May, 1990. An amount of Rs. 2,337.85 was sent to him on account of two days earned wages and retrenchment compensation calculated for his service for seven years. A copy thereof was sent to concerned Labour Officer and Labour Inspector. Intimation was given to Secretary/ Labour Commissioner Haryana also,--vide letter dated 23rd May, 1990 (Ex. M-93). The witness also stated that letter regarding loss of lien was sent to the workman at his present and permanent address. Both the letters were received back undelivered,--vide Ex. M-88 and M-89. Even the Money Order, receipt regarding which is Ex. M-85, was also returned by the workman who had refused to receive the same as per Ex. M-90 to M-92. The witness stated further that when the services of the workman had not been terminated, there did not arise the question of serving him with a charge-sheet. Time Keeper Jagdish Chander examined as NW-2 also stated that the workman who had joined duty on 24th April, 1989 in pursuance of Labour Court award worked only upto the first half day of 26th April, 1989 and thereafter left the factory and never came back. He had placed on record Ex. M-101 copy of attendance register for April, 1989. The witness denied that the workman was made to stand in the sun and no work was assigned to him even during the above said 2½ days. Ram Mehar Singh examined as MW-3 also said the same thing namely that the workman attended to his duties only for 2½ days.

Nitiya Nand Sharma, Head Clerk Labour Office Circle-II, examined as WW-1 stated that on 27th March, 1989 a telegram was received from the Management that the workman was not presenting himself for duty and that twelve letters in that regard were also received from the Management after the receipt of telegram. Workman Jamiluddin examined as MW-2 admitted that Ex. W-3 which is application for employment was filled in by his authorised representative Ashok Sharma. In this document temporary and permanent addresses of workman are given. In his cross-examination as WW-2, the workman admitted that during his total service, he had never changed his address viz, Ranjit Colony, Ram Sarup Colony Mujessar. The workman also admitted that his permanent address was that of village Udapur (U.P.). The workman also stated that on 25th April, 1989 he had made a complaint Ex. W-4 to the Labour Officer that he had been shunted out from the factory at 10.30 a.m. and was threatened with dire consequence if he came again to the factory. No credence can be given to this letter because it was not put to Head Clerk of Labour Office examined as WW-1. It was this witness alone who could tell as to whether Ex. W-3 was received in his office or not and what action the Department had taken thereon. The workman did not produce a copy of any letter which he alleges to have written about his non-induction into service. His statement that he used to give his letters to the Management by hand does not help his cause at all. So, the evidence which has been led by the workman does not provide cogent proof that he had been going to the factory till 10th May, 1990 or had been writing letters in respect thereof. The workman did not dispute his address given on all the letters which were sent to him rather he admitted the same as also the address of his authorised representative Ashok Sharma to whom also Communications were addressed at his address given in his application form Ex. W-3 which was

112

filled in by his authorised representative. So, the presumption is that all the letters posted to him under certificate of posting and were correctly addressed had reached him. In his cross-examination, the workman stated having changed number of places but admits his address on the letters. Besides this, refusal to accept letters also amounts to service as held in *Ved Parkash versus State of Haryana 1981(1)SLR 818*. The stand of the workman that he should have been called to join duty through publication in the newspaper cannot be accepted as there is no such mandatory requirement. It is correct that in letter dated 10th April, 1989 (Ex. M-116) the Labour Officer had not believed the Management of its stand that the Management was writing letters to the workman to join duty but the same cannot be taken as a clincher of the matter because before writing the above said letter no opportunity was given to the Management to vindicate its stand particularly when it had been writing letters in quick succession to the Labour Office to advise the workman to join duty. No such letter has been placed on record which may show that the Labour Officer had even once called the workman to his office and ascertain from him as to what was wrong and where. So, viewed from this all, there remains no doubt that the workman had lost lien of his own accord by remaining absent for more than a year. As per standing orders of the factory, if a person remains absent for 10 days continuously, he is deemed to have lost his lien of the job he was holding. More over, what was legally payable to him has been allowed in claim petition filed by him under section 33-C(2) decided separately on 16th December, 1994 and the Management had sent to him his retrenchment benefit as well. The law laid down by Hon'ble Supreme Court of India in *D.K. Yadav versus M/s JMA Industries Ltd., 1993(3) Service Cases Today* is thus not applicable to the facts of the case of this workman.

In the context of all that has been discussed above, it is held that the services of the workman were not terminated, rather he had himself abandoned the job by remaining absent. This issue is decided accordingly.

Issue No. 2:

10. The stand of the Management is that demand notice dated 11th May, 1990 was rejected by Labour-cum-Conciliation Officer vide letter Ex. M-81. This fact has been admitted by the workman in para 4 of the rejoinder filed by him. The claimant has not led any evidence to show that he had sent a copy of the demand notice to the Management. To say that a copy was sent by the workman by simple post is not enough. As per law, copy of the demand notice is required to be sent first to the Management and then to the Conciliation Officer. The claimant does not appear to have fulfilled the requirement of Section 2A of Industrial Disputes Act. It was so held in *Fedders Leoyed Corporation Pvt. Ltd. versus Lt. Governor, Delhi through Under Secretary Delhi and others 1970 Lab. I.C. 421* and *New Delhi Tailoring Mazdoor Union and S.C. Sharma and Co. FLR (39)195*. Once a demand notice is rejected, the authorities or the Government have to inform or call the other party to take the next course of action. In this case the demand notice was rejected by the Conciliation Officer,—vide Ex. M-81 and thereafter the management was not informed when the workman approached him to refer the same for adjudication. It was so held in *Sarsawati Industrial Syndicate versus State of Haryana 1994 (69) FLR 529*.

11. So, in view of legal and factual position, it has to be held that the reference is bad in law. This issue is decided accordingly.

Issue No. 3:

12. In his examination as WW-2, the workman admitted that he was engaged in selling vegetables and his daily earnings ranged from Rs. 10 to 50. The workman also stated that after his ouster, he had worked only with one firm namely M/s PEE ARR Industries and that, too, for 22 days. This statement of the workman does not appear to be correct because B.S. Nirman examined as MW-1 placed on record photo copies of three of affidavits of different persons with whom the workman had worked after leaving his job with the Management. Ex. M-97 is affidavit of Dashrath of M/s D.K. Spun Pipe Balabgarh. The workman is shown to have worked with him as a casual labourer on payment of daily wages of Rs. 22/50 from 20th January, 1988 to 10th May, 1988. Ex. M-98 is affidavit of N.C. Arora Proprietor M/s M.C. Arora Material Supplier with whom he had worked as causal labourer on payment of daily wages of Rs. 18 from 10th April, 1985 to 27th September, 1985 and Rs. 20 per day from 4th December, 1985 to 25th May, 1986 and from 5th July, 1986 to 24th December, 1986. Ex. M-99 is affidavit of Rajinder Sood, Government Contractor. The workman is shown to have worked with him as casual labourer at Rs. 20 per day from 3rd February, 1987 to 18th June, 1987 and at Rs. 22 per day from 20th August, 1987 to 28th December, 1987. As against this all, the said statement of workman that he had remained unemployed is not at all enough. So, taking the evidence of the Management as quite reliable, I hold that the workman is gainfully employed. This issue is decided accordingly.

Issue No. 4:

13. The stand of the Management that since the reference is bad in law, this court has no jurisdiction is not at all tenable. This issue is thus decided against the Management and in favour of the workman.

14. As a sequel to my findings on Issue Nos. 1 to 3, it is held that the services of the workman were not terminated by the Management but he had himself abandoned his job by remaining absent and for that matter he is not entitled to any relief. An award is passed accordingly.

N.L. PRUTHI,
Presiding Officer,
Industrial Tribunal-cum-Labour Court-I,
Faridabad.
The 23rd December, 1994.

Endorsement No. 4001, dated 23rd December, 1994.

A copy, with three spare copies, is forwarded to the Commissioner and Secretary to Government Haryana, Labour Department, Chandigarh.

N.L. PRUTHI,
Presiding Officer,
Industrial Tribunal-cum-Labour Court-I,
Faridabad.